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ABSTRACT

Independent colleges provide diversity, foster cultural pluralism, minimize state expenditures, and serve a broad cross-section of students--including low income and minority students. The National Commission on United Methodist Higher Education identifies three basic public policy principles: recognition of the essential public service function of independent institutions and the need to preserve those services for society; maintenance of diversity in higher education by assuring the autonomy and viability of individual institutions; and alteration of public policies that inhibit students' access to institutions of their choice. The National Commission makes recommendations regarding: financial aid programs that recognize the tuition gap and facilitate student choice; restructuring of Social Security and veterans' benefit programs; continuation of tax incentives for voluntary support of educational institutions; maintenance of the tax-exempt status of educational property; state coordination of higher education; revision of government regulations that excessively burden higher education institutions; and elimination of regulations that adversely affect institutional autonomy. United States Supreme Court decisions show that the federal and most state governments can develop programs to aid church-related and other independent institutions without violating the First Amendment. (Author)

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Endangered Service

Independent Colleges, Public Policy and the First Amendment

NATIONAL COMMISSION ON UNITED METHODIST HIGHER EDUCATION

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THE NATIONAL COMMISSION ON UNITED METHODIST HIGHER EDUCATION

The National Commission on United Methodist Higher Education was established by the Board of Higher Education and Ministry of The United Methodist Church in January, 1975. The National Commission's work consists of five broad areas of investigation:

1. An analysis of church policy with respect to The United Methodist Church's involvement in higher education through related institutions, campus ministries, and the support services of the Board of Higher Education and Ministry.
2. An analysis of the environment in which higher education functions and in which it will function in the future, including social, economic, and demographic trends which will affect independent higher education and the church.
3. An analysis of public policy and legal issues related to institutional/state and church/state relationships. Alternative social goals for public policy will be examined along with strategies to implement such goals.
4. An analysis of institutional goals, problems, organizational relationships, support structures, and institutional health, including modeling of effects of alternative church and public policies.
5. An analysis of the current system of campus ministries, including goals, problems, organizational relationships and support structures.

Recommendations based on these analyses will be developed for the appropriate constituencies including public policy makers, institutions, campus ministries, and church members and officials.

Recognizing that many of the problems and concerns the National Commission will be addressing are not peculiarly United Methodist but involve all of independent and especially church-related higher education, an *Interdenominational Advisory Group* to the National Commission was formed. The *Interdenominational Advisory Group* consists of staff from the following:

African Methodist Episcopal Church
American Baptist Church
American Lutheran Church
Christian Church (Disciples of Christ)
Christian Methodist Episcopal Church
Lutheran Church in America
Lutheran Educational Conference of North America
National Catholic Education Assn.
National Council of Churches
Presbyterian Church in the U.S.
Southern Baptist Convention
United Churches of Christ
United Presbyterian Church, U.S.A.

Representatives from the above denominations and organizations have committed their time to the work of the National Commission and are sources of information and insight.

The National Commission is an extraordinary organization in several respects. First, the National Commission is a true *ad hocracy*, designed to self-destruct at the end of two and a half years. No resources will be expended to perpetuate either the Commission or positions for its staff. Second, the National Commission's charge was totally open-ended. There are no *a priori* conclusions or commitments to the status quo in United Methodist higher education with respect to either campus ministries or institutions. Even the Board of Higher Education and Ministry, the Commission's parent organization, has opened itself to examination and evaluation by the National Commission. Third, the National Commission staff are independent-minded generalists in higher education. They are committed to rigorous scholarship in the conduct of the various research studies and the formulation of the National Commission policy recommendations. Finally, the National Commission membership is a highly diversified group of persons, each having achieved distinction in his or her own right. This collective experience and wisdom constitute an extraordinary resource committed to what is probably the most comprehensive study ever undertaken by any denomination of its interest and investment in higher education.

FOREWORD

Independent institutions have served this country long and well and wish to continue to do so. The National Commission on United Methodist Higher Education believes that public policy makers at all levels of government must acknowledge that service and take steps to help assure its continuance. Yet many governmental actions in these days actually work against that end, unintentionally in most cases, we suspect, but still tragically.

The National Commission has addressed the questions of public policy and independent higher education in a most responsible manner, with emphasis on educational service. To be sure, most observers agree that independent higher education in the United States faces serious problems. The rapid inflation of recent years, the growing tuition gap between state and independent sectors that results from state subsidies to state institutions, and the anticipated decline in total higher education enrollments in the 1980s all contribute to this situation. But the National Commission believes that the critical concern is student choice and that such problems can be overcome if its recommendations are implemented.

In order to promote informed discussion of public policies toward independent higher education, the National Commission on United Methodist Higher Education has set forth three basic public policy principles and a series of associated recommendations. The National Commission advocates the recognition and maintenance of the public service role of independent institutions, the preservation of diversity and autonomy in American higher education, and the facilitation of student choice among types of institutions. We believe that the widespread acceptance of these basic principles will lay the foundation for wise resolution of policy questions at both the state and federal levels.

The Commission does not make its recommendations for the sake of *institutions*. Most independent colleges and universities will likely survive no matter what public policies are in place; and survival for its own sake is not the goal. The concern is for the quality of these institutions, their continued strong service, and the freedom of students to avail themselves of that service, regardless of wealth. Adequate public policies are needed now to preserve this *endangered service.*

Paul Hardin

INTRODUCTION

When the National Commission began its work in 1975, it was apparent that one of the most crucial issues to consider was the future of public policy with respect to independent sector institutions. Many individuals and organizations have studied and worked in this area, and the findings of many of these studies are referenced in this volume. Nevertheless, the Commission found considerable residual confusion about public policy issues on the one hand and constitutional issues on the other. In this volume we have tried to separate these issues as clearly as possible. The analyses supporting the public policy positions taken by the Commission address the effects of current policies, goals for future policies, and the probable results of policy changes. All of these relate to what society should attempt to accomplish. Such questions are separate from questions of what is legally possible. Therefore, an analysis of the constitutional questions related to the separation of church and state and a review of relevant litigation in this area to date are also included.

The volume is separated into three parts. Part One presents the public policy principles and recommendations adopted by the National Commission. Part Two presents extensive analyses related to the development of these public policy principles and recommendations, with Chapter Four presenting summary rationales for the positions taken by the National Commission. Part Three presents the analysis of legal issues, the constitutional question. Whether or not every reader agrees with specific recommendations of the National Commission, this volume is a uniquely comprehensive primer on the concepts and issues and should, therefore, be of wide utility.

The National Commission staff has been organized to function in such a way that authorship of all staff materials has been shared by the total professional staff. That is true of the analyses presented in this volume as well, yet it must be noted that Dr. Renée G. Loeffler and Dr. Kent M. Weeks did primary research for the public policy analyses. Dr. Weeks also did the extensive, and original, legal research and presented an early draft of some of the legal analyses to a symposium sponsored by the Center for Civil Rights, Notre Dame University School of Law, in April, 1976. Both have performed an exceptional service to the Commission and higher education in this work.

As with any research of this sort, relying primarily on secondary sources for data and analyses, problems have arisen with respect to comparability. Some data are available only for certain points in time, too often not as recent as would be preferred. Some analyses use headcount enrollments and others are based on numbers of full-time-equivalent students. Two sources for the same data sometimes differ slightly. The analyses presented in this volume are designed to avoid these and similar conflicts wherever possible, but some are inevitable. Nevertheless, where they do occur, any bias so introduced is not of sufficient magnitude to require even potential modification of the conclusions reached.

The many revisions of the several manuscripts which form this volume have required the skill and patience of an outstanding clerical staff. Commission secretaries Mrs. Connie L. Edwards and Mrs. Kim S. Kelley have provided extraordinary service. Mrs. Frances M. Graham, the Commission's office manager, has been responsible for coordinating the total support staff effort for the Commission in an exceptional manner. Graphic designer and layout artist for National Commission publications is Hermann F. Zimmermann of Design-Graphics, Inc., Nashville, Tennessee.

There are many others to whom the Commission and its staff are indebted for their assistance in preparing these materials. One of the most pleasant discoveries of the total National Commission project has been the willingness of persons throughout the country to share their time with us in reviewing manuscripts, making suggestions, providing data, and otherwise assisting the staff in their completion of this work. Among those making such contributions to this volume are: Nyles Ayers; Calvin L. Beale; Sharon L. Coldren; Carl M. Dibble; Leo J. Eiden; Elaine H. El-Khawas; Loretta Glaze Elliott; Robert Hartman; Peggy Heim; Howard Holcomb; Lewis Hyde; Philip S. Kronenberg; Marilyn McCoy; John D. Millett; James Olliver; F. Thomas Trotter; Karen Hanke Weeks; and Thomas W. West. A special debt is owed to Charles H. Wilson, Jr. for his assistance in the legal analyses. To all of these we acknowledge our debt and express our gratitude. While the contributions of all of these have been invaluable, in the final analysis it is the National Commission, in the instance of Part One, and the National Commission staff in the instance of Parts Two and Three, who must accept full responsibility for the contents printed therein.

Over a period of almost three and a half centuries governmental policies toward education have changed to meet new social conditions and needs. The question now before federal and state policy makers is how they will respond to the needs of our time. Will they recognize that important educational resources exist within the independent sector and develop policies to maintain the public service role of independent higher education? Will federal and state policies help to maintain the diversity in higher education that has served us so well and that depends, among other things, on maintaining a high degree of institutional autonomy and flexibility? Will they develop policies that will lessen the tuition gap between independent and state institutions and thus give students a real choice of institutions? The principles and recommendations of the National Commission presented in this volume provide the means for positive answers to all these questions. Our success will utimately be measured by the extent to which this work is utilized by public policy makers and institutions throughout the country in developing future public policy for the states and the nation.

T. Michael Elliott

Principles and Recommendations

The National Commission on United Methodist Higher Education has set forth three significant principles to guide their work and the work of others in the area of public policy and independent higher education. In addition, the National Commission has approved six specific recommendations for public policies. These principles and recommendations are summarized here. They are developed more fully in Part Two, Chapter Four.

PART ONE

National Commission on United Methodist Higher Education: Recommendations for Public Policy

The National Commission on United Methodist Higher Education believes that public policy makers at all levels of government must acknowledge and help to resolve the substantive public policy issues identified in this volume. The National Commission has identified three basic public policy principles and six related recommendations which set forth objectives for public policies and programs. Recognizing that there are various means that can be used to achieve those objectives, the National Commission believes the selection of particular programs must be left to the political processes and specific conditions at state and federal levels. Acceptance of these principles and implementation of these recommendations, however, will insure the successful resolution of public policy questions related to independent higher education.

PRINCIPLE 1: Independent institutions of higher education perform an essential public service function. State and federal public policies should recognize that service and seek to preserve its benefits for society.

PRINCIPLE 2: Government policies at both the federal and state levels should preserve diversity in higher education by assuring the autonomy and viability of individual institutions.

PRINCIPLE 3: America's youth deserve a choice among institutions within a diverse system of higher education. The subsidization of state institutions and the absence of offsetting student financial assistance programs effectively prevent many students from considering independent institutions. Public policies that create real or apparent economic barriers to attendance at independent institutions should be changed in order to assure students access to institutions of their choice.

Recommendations

Within the policy framework of these three principles, the National Commission on United Methodist Higher Education sets forth six recommendations.

1. The federal and state governments should create or expand programs of student financial assistance aimed at facilitating student choice among diverse types of institutions.

2. Federal Social Security and veterans' benefit programs should be restructured to lessen the present discrimination against students attending independent institutions.

3. Federal and state tax policies providing incentives for voluntary support of charitable and educational institutions should be continued.

4. State and local governments should maintain the tax exempt status of property belonging to educational institutions if used for educational purposes.

5. The process of coordination of state systems of higher education should adequately take the independent sector into account and avoid duplication of the unique program offerings of independent institutions. Where master plans provide for specific state or regional programs in independent institutions, provision should be made for reimbursing those institutions for the cost of instruction.

6. Federal and state agencies should revise regulations and reporting requirements that result in excessive administrative burdens and costs for both state and independent sector higher education institutions. Further, they should abolish or amend regulations that adversely affect institutional autonomy. Specific violations of law should be addressed through specific actions aimed at the violators rather than through all-encompassing regulations.

It is the National Commission's belief that these policy recommendations, if implemented by appropriate state and federal agencies, will preserve the diversity and autonomy of institutions independent of the state and adequate choice among educational opportunities for our nation's students.

Public Policy Issues

Prior to adopting the principles and recommendations summarized in Part One, the National Commission on United Methodist Higher Education reviewed extensive analyses of related data. These analyses are reproduced here in three chapters organized around the three principles set forth by the National Commission. It should be emphasized that although the National Commission has received and utilized these analyses, it is the staff and not the Commission membership which bears responsibility for their content, as they have not been adopted or otherwise approved by the National Commission. The fourth chapter presents the National Commission's statements of principles and recommendations with summary rationales.

T. Michael Elliott
Renée G. Loeffler
Kent M. Weeks
Diane Dillard

PART TWO

1. Independent Colleges and Public Service

Myth and Reality

Independent colleges and universities are subjected to much misinterpretation in the popular literature. Unfortunately, such misperceptions are often found in professional discussions of higher education as well. Frequently called private, these institutions are thought of as colleges of the elite. Their high tuitions suggest that they are attended by the children of the wealthy and that they operate inefficiently and at higher cost than state supported institutions. The institutions themselves are often thought of as wealthy, with large endowments and substantial gift income. They are sometimes alleged to perpetuate racial discrimination and those affiliated with a church are often thought to exist primarily to proselytize a particular religious point of view. It has even been claimed that higher tuition at independent institutions causes students to spurn public service professions, to become obsessed with the goal of great financial success, and, ultimately, to fall victim to ulcers and heart disease. These views are a caricature of independent higher education, of course, but they constitute a strong, persistent myth, one which still confuses the discussion of public policy toward independent higher education. Yet, the myth is exploded when confronted by reality.

Discussions of higher education often distinguish between "public" and "private" institutions. This terminology is inappropriate since it denies, or at least ignores, the fact that all institutions of higher education serve a *public* purpose, that of providing education and other services to the American people. Indeed, one historian of American higher education has noted that American colleges have been "cloaked with a public purpose" from the very beginning.[1] Recognizing the misleading nature of the public/private distinction, this volume uses the terms *state* and *independent*.

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[1] Frederick Rudolph, "Who Paid the Bills? An Inquiry Into the Nature of Nineteenth-Century College Finance," *Harvard Educational Review*, vol. 31, no. 2 (1961), p. 144.

During the early history of this country all institutions of higher education were independent, but many nonetheless received substantial tax-funded support in recognition of the public purposes they served. In more recent times, state and independent institutions have depended on different sources for their revenues and have had different governance structures, but they continue to serve a common public purpose. In assessing the case for public support of the independent sector, the Carnegie Commission recognized that:

> To the extent that higher education represents a public benefit, societal advantages accrue from attendance at a private college just as from attending a public college. Thus, the issue of public support of higher education should not be decided only on the principle of governance and administrative control.[2]

Despite the substantial litigation challenging programs of public support for church-related colleges, judicial decisions, without exception, have acknowledged the public purposes which church-related and other independent institutions serve. *This question has never been a significant point of dispute in constitutional litigation.*[3] The Supreme Court has, in fact, affirmed the public purpose concept:

> Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience.[4]

Pluralism

Independent colleges make a distinct contribution to American education and, more broadly, to American society. The many diverse independent colleges help to support the foundations of pluralism by serving the needs of various groups within the society and by providing a bulwark against potential political infringement on academic freedom.[5]

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[2] *Higher Education: Who Pays? Who Benefits? Who Should Pay?* A Report of the Carnegie Commission on Higher Education (New York: McGraw-Hill, 1973), p. 113.

[3] See Part Three of this volume.

[4] *Hunt* v. *McNair*, 413 U.S. 734, 742 n. 5 (1973) citing *Board of Education* v. *Allen* 392 U.S. 236, 247 (1968).

[5] For a fuller discussion of cultural pluralism and educational diversity see *A College-Related Church: United Methodist Perspectives* (Nashville: National Comission on United Methodist Higher Education, 1976), pp. 52-64.

The operative assumption in a pluralistic society is that citizens should be allowed to form groups and to develop institutions that will meet their needs in ways which government cannot. A significiant aspect of the American heritage, one that distinguishes it from most other societies, is the encouragement, maintenance, and fostering of groups that are able to respond to their members' needs without governmental control or substantial intervention. The important contribution of pluralism to the uniqueness of American society and the maintenance of our democratic institutions has long been remarked upon by observers of American society. DeTocqueville, a sensitive and insightful commentator, recognized the development of associations independent of the state—including churches and educational institutions—as a keystone of American culture. Edmund Burke noted that the presence of the "little platoons," intervening between the individual and the state, was a key element in the preservation of freedom in this country.

The establishment and maintenance of independent colleges, beginning with the founding of Harvard College in 1636, has been an important aspect of American pluralism. The right to establish educational institutions independent of state control did not go unchallenged, however. The question of whether a state had a right to bring an independent college under its control was raised and decided in the Dartmouth College case in 1819. The specific question before the court was whether the State of New Hampshire had violated the charter granted to Dartmouth College by the Crown in 1769 when it passed legislation rewriting the charter to bring Dartmouth under state control. Daniel Webster, attorney for the college, argued eloquently the importance of maintaining educational institutions independent of the state: "It will be a dangerous, a most dangerous experiment, to hold these institutions subject to the rise and fall of popular parties and the fluctuations of political opinions." The decision of the Marshall court in favor of Webster's arguments gave legal protection to voluntary private groups to establish colleges to serve their particular purposes and for those colleges to remain independent of the state. The Dartmouth College case was an important affirmation of the rights of American citizens freely to form groups and establish institutions to meet their personal and group needs.

America's historic and current commitment to the enhancement of cultural pluralism and the preservation of freedom depends on the maintenance of significant social institutions not under the control of the state. An independent academic estate both enhances the diversity of American culture and helps to preserve personal and group freedom. Strong independent colleges can counter the tendency among state institutions toward homogeneity in purpose and program as well as check the pressures to serve utilitarian objectives alone. By providing an alternative to a state-controlled monopoly of higher education, the independent sector also helps to protect freedom of expression from political interference, not only on its own campuses but on those of state institutions as well. Although abuses of academic freedom have occurred in both the independent and state sectors, it is widely agreed that the dual system of higher education strengthens academic freedom in each. Because of its contribution to both cultural pluralism and intellectual freedom, an academic estate functionally independent of the state must be perpetuated.

Diversity in Higher Education

The special contributions of independent colleges and universities are found not only in the enhancement of cultural pluralism and intellectual freedom, but more specifically in their contributions to the diversity and quality of American higher education. One of the hallmarks of American higher education is great diversity in the size, character, constituencies, and purposes of its institutions.[6] A definitive history of American higher education noted the contrast between our system and others:

> American higher education has never been forced to conform to any one uniform pattern of organization, administration, or support. In the United States, there has never been a national ministry of government nor a state church to impose norms of university procedure and control. The vast size of the country and heterogeneous makeup of its population have made it difficult to establish uniformity in higher learning.[7]

The lack of uniformity in American higher education has meant that students have been able to choose from among a wide range of institutions. A certain amount of diversity is found, of course, in the state sector. It is the independent sector, however, that markedly increases the range of choices available to students. The prototypical American collegiate institution, the four-year undergraduate liberal arts college, is found almost exclusively within the independent sector.

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[6] This diversity has often been commented on very favorably by foreign scholars who find it to be in sharp contrast with the more monolithic educational systems found in most other countries. For a discussion of their views, see David Riesman, "The Future of Diversity in a Time of Retrenchment," Convocation Address at Windham College, Vermont (October 19, 1974), p. 1.

[7] John S. Brubacher and Willis Rudy, *Higher Education in Transition: A History of American College and Universities, 1936-1968,* Revised and enlarged (New York: Harper and Row, Publishers, 1968), p. 61.

The independent sector also contributes to diversity through the ability of all independent institutions to select students, faculty, and trustees who support the particular purposes of the institutions. Independent colleges have a greater opportunity than do state institutions to direct themselves toward a particular purpose, social need, or constituent group. They can more easily define their role in terms of specific purposes and students to be served rather than yielding to the temptation simply to respond to shifting state policies and funding priorities. For example, colleges designed to serve a single sex or a particular ethnic or religious group may be highly desirable for some students given their personal needs and concerns. It is only within the independent sector that such institutions can be supported.

In addition to sponsoring more varied forms of education to meet a wide variety of student needs, independent colleges also provide state institutions with competition that encourages the latter to maximize their own strengths. Many observers have commented on this beneficial impact of the independent on the state sector. The Carnegie Council, for instance, found that:

> Private colleges and universities have played a distinctive role in the development of American higher education and contribute greatly to diversity and flexibility within our system. Their existence provides a strong incentive for public colleges and universities to seek to maintain comparable standards of quality and helps to strengthen academic freedom in the public sector.[8]

The two major political parties in the United States both recognize the contributions of independent higher education and the need to support diversity and student choice. The 1976 platform of the Republican Party stated that "diversity in education has great value." It advocated assistance to independent institutions "to maintain healthy competition and to enrich diversity. The cost of expanding public campuses can be kept down if existing private institutions are helped to accommodate our student population." [9] Similarly, the 1976 platform of the Democratic Party declared that "campus-based programs of aid must be supported to provide a reasonable choice of institutions as well as access" and called for federal cost of education payments "to all higher education institutions." [10]

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[8] *The Federal Role in Postsecondary Education: Unfinished Business, 1975-1980,* The Carnegie Council Series (San Francisco: Jossey Bass Publishers, 1975), pp. 36-37.

[9] "GOP Platform," *The Chronicle of Higher Education,* September 7, 1976, p. 7.

[10] "Platform Provisions of Interest to Colleges," *The Chronicle of Higher Education,* July 19, 1976, p. 3.

The importance of the independent sector has also been recognized by the Education Commission of the States. In an official policy statement, the Commission said:

> The dual system of public and private higher education in this country has served us well. It has helped provide a diversity of higher education opportunities and a healthy competition in the achievement and preservation of quality. . . . [Independent institutions] constitute a major resource to the states and the nation which we could ill afford to lose.[11]

Minimizing State Expenditures for Higher Education

One of the most striking, but least recognized, contributions of the independent sector is the lower level of taxpayer expenditures that result from the provision of educational services by independent colleges. To the extent that students are educated in the independent sector, where only a small portion of the costs of their education is borne by the public, the state either saves the tax funds that would otherwise have to be expended on the education of those students or saves the social costs of failing to educate them.

To measure the tax savings to the state that result from the services rendered by the independent sector, one must begin by estimating the *state subsidy* per student, the tax funds used to pay the costs of educating each student in a state institution. Certain difficulties are encountered in determining state subsidies, however, because statements of expenditures for state higher education systems frequently do not include capital costs, fringe benefits, or other items that are allocated to portions of the state budget other than higher education. In addition, calculations of state subsidies are often based only on the expenditures of educational institutions and do not include the cost of higher education commissions and other supra-institutional agencies. An accurate estimate of the state subsidy would have to include those expenditures as well.

In most states, it is not easy to estimate the size of the state subsidy. Because the states use varied processes in cost accounting for higher education, it is even more difficult to make state by state comparisons and nationwide generalizations. The process employed by the state of Connecticut illustrates the complexity inherent in determining the size of state subsidies. Each year the Connecticut Commission for Higher Education calculates "the net cost to the state" of educating a student in state four-year and two-year colleges. To the state higher education appropriation as modified by the governor are added educational expenditures by other state agencies for items such as office equipment, capital repairs, and fringe benefits. For 1975-76, those expenditures amounted to 21.9% of the direct appropriations for higher education, thus illustrating the misleading nature of state cost figures based on direct appropriations alone. Expenditures for organized research, extension service and public service are then subtracted—a correction of about minus 4.1% in 1975-76. After allocating a substantial amount for graduate student costs, the Connecticut Commission calculates an average current cost per full time equivalent (FTE) student. Annualized plant costs are added to that figure, a correction that in 1975-76 increased the previous cost figure by 13.6% for four-year colleges and 20% for two-year colleges. Once these steps have been completed, estimated average costs to the state are obtained. The results for 1975-76 were a state subsidy of $2,052 per student at four-year colleges and $1,706 at two-year colleges.[12] It is emphasized that these data represent estimates of *state subsidy* only, not *costs*, because total *costs* include expenditures of funds received from student tuition and other sources in addition to state funds.

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[11] "Educational Opportunity: The States and Private Higher Education," a Policy Statement, Education Commission of the States, March 21, 1975.

The Connecticut analysis clearly demonstrates the difficulty of identifying the cost to the state (state subsidy) for each student, and the problem is much more complex in many other states. This analysis also highlights the variety of cost items not found in the budget appropriations for many state systems. In an elaborate study to identify costs, the Carnegie Commission found that "annual capital costs add 10 to 20 percent to annual operating costs, probably ranging between 12 to 15 percent over long periods of time." [13] Therefore, estimates of state subsidy that do not include capital costs are also misleadingly low.

The National Center for Higher Education Management Systems has conducted a detailed study of the support given by state and local governments to higher education institutions. The report for the latest year available, 1973-74, gives some indication of the substantial size of the state and local subsidy to state institutions. It must be emphasized, however, that these data do *not* include state funds used for *capital* expenditures and, in some cases, also exclude fringe benefits and other institutional expenses. Consequently, the actual number of state and local tax dollars supporting each student at a state institution was substantially higher than the amounts shown. The findings of the Carnegie Commission cited above suggest that these figures must be increased by at least 10 to 20 percent in order to take into account capital costs alone. The report for 1973-74 estimates the average subsidy from state and local funds per FTE student at state institutions to have been $1,881.[14] This figure includes both direct institutional support and student aid. In a more recent study, D. Kent Halstead of the National Institute of Education estimated the average state appropriation per full-time equivalent student in 1975-76 to be $2,216. There were serious inadequacies, however, in the data available to Halstead, particularly failure to include some expenditures such as fringe benefits.[15]

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[12] Lewis H. Hyde, "The Cost of Educating a Student in the Public Sector in Connecticut—1975-76," Hartford, Connecticut Conference of Independent Colleges, January 26, 1976.

[13] *Higher Education: Who Pays? Who Benefits? Who Should Pay?*, *op. cit.*, p. 36.

The data on state subsidies suggest that it would be very costly to state and local governments if tax supported institutions had to absorb those students currently enrolled in the independent sector. The frequent failure to recognize the role of the independent sector in minimizing state expenditures for higher education often results from confusing two very different things, the *price* (tuition and fees) of a college education and the *cost* of a college education. Quite clearly, the *price* charged to the student in the form of tuition and fees is much higher at independent than at state institutions. That fact has led some to conclude that *costs* are also much higher in the independent sector. However, it is not *costs* that are lower in state institutions but merely *prices*. Appropriations of tax funds are the major source of income of state institutions. Because of the tax revenues they receive, they can charge students relatively low tuition and fees. It is the tax funded *state subsidy* that allows state institutions to charge lower prices. Some argue that per student costs are indeed lower in state than in independent institutions because state institutions can achieve efficiencies of large scale. While that may be true in comparisons of some specific institutions, it is clearly not true in others. Costs in the two sectors tend to be very similar at comparable types of institutions.

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[14] Marilyn McCoy, *et. al.*, *State and Local Financial Support of Higher Education: A Framework for Interstate Comparison, 1973-74*, Field Review Edition, (Boulder, Colorado: National Center for Higher Education Management Systems, 1976), Table 11, p. 33.

[15] See Malcolm G. Scully, "State Support of Colleges: A New Way to Analyze It," *The Chronicle of Higher Education*, March 8, 1976, pp. 4-5.

Non-instructional costs appear to be relatively uniform in both sectors. Large state institutions do not seem to benefit from economies of scale in purchasing or in the management of dining and residence halls. The Consortium on Financing Higher Education found that non-instructional costs per student were very similar throughout higher education "averaging in 1975-76 very close to $2,100 at all types of institutions." [16] Comparisons of instructional costs are more difficult to make because of the many items included in those costs and the different expenditure patterns found in institutions of different types. Universities, for instance, have large research expenses which are not incurred by two-year institutions. The available evidence suggests, however, that state and independent institutions of similar type generally incur very similar costs for each student educated. This proposition is supported by both case study evidence and financial surveys of large numbers of institutions.

A study conducted by the Battelle Center for Improved Education compared costs at two similar institutions in the same community, the independent University of Evansville and Indiana State University at Evansville. There was little difference between the two institutions.

> These data indicate that the average cost for education is currently about $200 per student per year higher at the University of Evansville than it is at the Indiana State University at Evansville. A major portion, if not all, of this difference can be attributed to the higher cost of graduate programs, school of nursing and engineering, which are offered only at the University of Evansville. Thus, there appears to be no major difference in the cost to educate a student at the two universities.[17]

Figure 1 shows the average educational and general expenditures per FTE student in 1973-74 at state, independent, and United Methodist four-year and two-year colleges. The costs of educating a student in an independent two-year or four-year college were very comparable to the costs at a similar state institution. Compared to state institutions, educational and general expenditures per student in the independent sector were only $175 more in two-year and $195 more in four-year institutions, differences of less than 10% and 7% respectively. Costs at United Methodist two-year colleges were less than those in the independent sector

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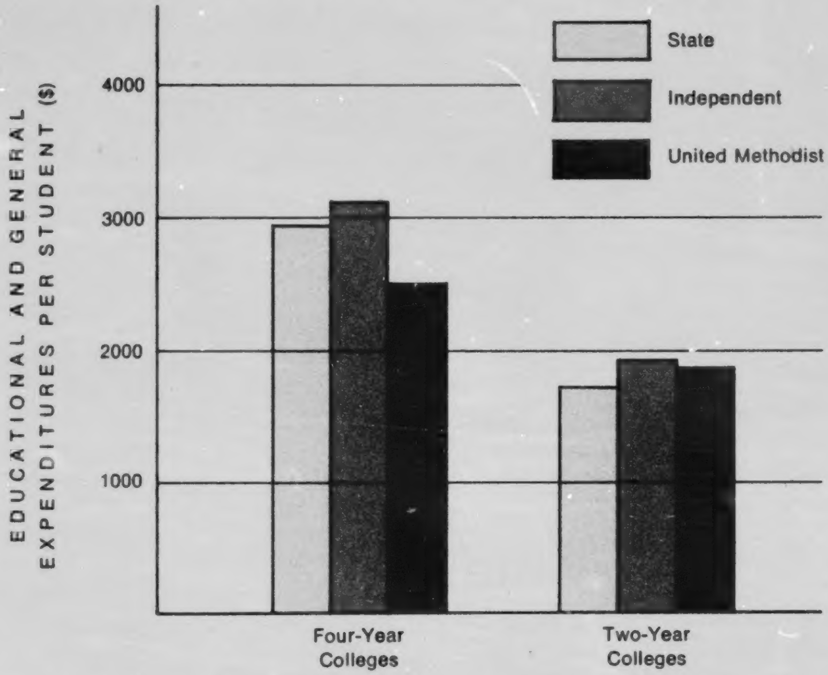
[16] *Federal Student Assistance: A Review of Title IV of the Higher Education Act*, a synopsis of the report (Hanover: Consortium on Financing Higher Education, April, 1975), p. 3.

[17] W. D. Hitt, R. L. Jones, and B. B. Gordon, "A Study of Alternatives for Collaboration Between the University of Evansville and Indiana State University—Evansville," (Columbus, Ohio: Battelle Center for Improved Education, December 31, 1974), p. 22.

FIGURE 1: *EDUCATIONAL AND GENERAL EXPENDITURES PER FTE STUDENT AT STATE, INDEPENDENT AND UNITED METHODIST-RELATED INSTITUTIONS, 1973-74*



SOURCE: Marilyn McCoy, *et. al., State and Local Financial Support of Higher Education: A Framework for Interstate Comparisons, 1973-74*. Field Review Edition. National Center for Higher Education Management Systems, May 1976, Table 17, p. 43. Data on United Methodist-related institutions was supplied to the National Commission by the institutions.

as a whole, and in four-year institutions they were 14% *less than in state institutions*. Thus in the two-year and four-year colleges that educate 70% of the students in both sectors, there are only minor differences in costs, and some independent institutions operate at a lower cost per student than do comparable state institutions.[18]

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[18] The category of four-year colleges does not include universities. There is some evidence that per student expenditures are higher at independent than at state universities, but the data are, in many ways, misleading. The state and independent institutions categorized as universities tend actually to be very different types of institutions. Those in the independent sector generally meet the traditional definition of a university, an institution engaged in graduate and professional education and large scale research in addition to undergraduate education. Many state institutions categorized as universities perform a much less comprehensive mission. Originally

In the absence of uniform accounting methods which would identify *all* of the costs of educating students in state institutions and thus make state sector data comparable to that provided by independent institutions, it is impossible to specify the exact difference, if any, in per student costs in the two sectors. What is quite clear, however, is that if the state were to assume the responsibility to educate students currently enrolled in independent institutions, total state costs would increase dramatically. If large numbers of independent institutions were suddenly to close their doors, state systems could decrease their additional costs by buying up entire campuses at bargain rates. However, if the independent sector should decline, it will not happen suddenly but rather through a slow, continuing movement of students from independent to state institutions, requiring the state sector to incur substantial capital costs to provide facilities for the additional students. Even if one ignores capital costs and assumes a marginal state subsidy of only $2,000 per student, the cost to the states of educating the nation's 2,100,000 independent students would be $4.2 billion a year, a sum equal to 27% of the educational and general expenditures of state institutions in 1973-74.[19]

Any assertion that additional students could be enrolled at marginal costs less than current average costs is contradicted by the cost pattern of state sector enrollment growth to date and by the formula funding schemes used in many states. Further, the marginal cost of each additional student would certainly be many times more than the few dollars of state and local tax funds that currently help to support students in independent institutions. New and expanded programs of student aid would cost taxpayers less than accommodation of current independent sector students at state colleges and universities. Even in a situation of expected declining enrollments in which state institutions were anxious to find new students, it would be more economical to maintain the

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teacher training institutions, they have been assigned additional programs and degrees but do not have either educational or research programs comparable to most of the independent—and the minority of other state—universities. Although exact data on student-faculty ratios at independent and state institutions are difficult to obtain, impressionistic evidence suggests that lower ratios at independent universities also account for some of the apparent cost difference. While some might view lower student-faculty ratios as a sign of inefficiency, they have traditionally suggested a higher quality of education providing more attention to individual students.

[19] Ellen Cherin and Marilyn McCoy, *Data Values Used in the Development of Analysis Reports for the Study of State Financial Support of Higher Education: A Framework for Interstate Comparison—1973-74*, Field Review Edition (Boulder, Colorado: National Center for Higher Education Management Systems, March, 1976), p. 15.

services of independent institutions than to transfer those students to the state sector. The only situation in which such economies would not result would be one in which appropriation levels to state institutions were maintained despite declining enrollments. For all these reasons, it is clear that it is in the best economic interests of the state and taxpayers to preserve the services of independent institutions of higher education.

Students Served

It is sometimes suggested that independent institutions do not serve public purposes to the same extent as state institutions because the former are elitist in nature. The evidence refutes that assertion.

TABLE 1. *PERCENTAGE DISTRIBUTION OF UNDERGRADUATE STUDENTS BY FAMILY INCOME AND INSTITUTIONAL TYPE, 1972*

Institutional Type/ Family Income Level	State Institutions	Independent Institutions
Research Universities		
Family Income Under $10,000	28%	20%
Family Income $10,000 & Above	72%	80%
Other Doctoral-Granting Institutions		
Family Income Under $10,000	34%	33%
Family Income $10,000 & Above	66%	67%
Comprehensive Colleges		
Family Income Under $10,000	43%	30%
Family Income $10,000 & Above	57%	70%
Liberal Arts Colleges		
Family Income Under $10,000	25%	30%
Family Income $10,000 & Above	75%	70%
Two-Year Colleges		
Family Income Under $10,000	40%	33%
Family Income $10,000 & Above	60%	67%

SOURCE: *Financing Postsecondary Education in the United States,* The National Commission on the Financing of Postsecondary Education, Washington, DC, U.S. Government Printing Office, 1973, p. 140, taken from U.S. Bureau of Census, *Current Population Survey* (October, 1972), special tabulations, figures rounded to nearest percent.

Income Level. The data in Table 1 show little difference in the family income of students in independent and state institutions. Those differences that do exist are not primarily between students in the two sectors but between students in different types of institutions. A majority of independent institutions are liberal arts colleges. In 1972, 30% of the students in those institutions came from families with incomes of less than $10,000. The comparable figure for students at state liberal arts colleges was 25%. The majority of students in state institutions attend two-year colleges. In 1972, 40% of state two-year college students came from families with incomes under $10,000. At independent two-year institutions the proportion of students from that income group was very similar, 33%.

The most recent available evidence shows that despite the inflation which has forced independent institutions to raise tuition in the past few years, they have continued to do a remarkable job in educating a broad spectrum of students from all income levels. Table 2, based on nationwide data on new freshmen in the fall of 1975, shows little difference in the family income of students enrolled in the independent and state sectors.

TABLE 2. *FAMILY INCOME OF FULL-TIME FRESHMEN BY TYPE OF INSTITUTION, 1975*

Family Income	2-Year Colleges		4-Year Colleges				Universities	
				Independent				
	State	Ind.	State	Protestant	Catholic	Nonsectarian	State	Ind.
Under $10,000	29%	35%	23%	24%	20%	19%	14%	10%
$10,000 to $19,999	46%	39%	44%	41%	42%	36%	41%	31%
$20,000 or more	25%	26%	33%	35%	39%	45%	45%	59%
Total	100%	100%	100%	100%	101%*	100%	100%	100%

* More than 100% due to rounding.

SOURCE: A. W. Astin, M. R. King, and G. T. Richardson. *The American Freshman: National Norms for Fall 1975,* Los Angeles, UCLA Graduate School of Education, Cooperative Institutional Research Program, 1975, p. 45.

In some cases, independent institutions had a *higher* percentage of students from lower income families than did state institutions. For instance, 35% of the students in independent two-year colleges, compared to 29% of those at state two-year colleges, came from families with incomes less than $10,000 per year. Among the four-year colleges, where the data for independent institutions is available by type of religious affiliation, the family income profiles of students in Protestant and Catholic-related institutions were virtually identical with those of students at state institutions. It was only at nonsectarian institutions that there was a somewhat higher percentage of students from high income families, 45% having family incomes of $20,000 or more. That percentage, however, was exactly the same as that found among students at state universities. To label these independent four-year colleges as elitist requires the same label be given to state universities which enrolled a *smaller* percentage of low income students than did the independent four-year colleges. While independent universities enrolled a somewhat larger percentage of their students from relatively high income families, the overall family income profile was quite similar to that of students at state universities.[20] Clearly, independent institutions are *not* schools for the rich but educate a highly representative cross-section of all American college students.

Minority Enrollment. The record of independent institutions in educating minority students is comparable to that of state institutions. The 1972 data in Table 3 show that the percentages of nonwhite students in the independent and state sectors were quite similar, 8% and 9% respectively. For some types of institutions the percentage of nonwhite students enrolled was higher in the independent than in the state sector. Independent research universities, for instance, enrolled 9% nonwhite students, compared with 6% at state research universities. Independent liberal arts colleges enrolled 10% nonwhite students, compared with 3% at state liberal arts colleges. Even at two-year colleges where state institutions charge little or no tuition, nonwhite enrollment was only slightly higher in state than in independent institutions, 9% and 7% respectively.

Another way to analyze minority enrollment in independent and state institutions is to compare the percentage of minority students enrolled

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[20] If one stratifies the universities by their degree of selectivity as measured by the test scores of their entering students, one finds virtually identical income profiles among students in the state and independent sectors. A. W. Astin, M. R. King, G. T. Richardson, *The American Freshman: National Norms for Fall 1975* (Los Angeles: UCLA Graduate School of Education, Cooperative Institutional Research Program, 1975), p. 57. For additional data on family income of students, see Appendix Table 1.

TABLE 3. *PERCENT OF STUDENTS WHO WERE NONWHITE BY SECTOR AND TYPE OF INSTITUTION, FALL, 1972*

Institutional Type	Independent Institutions	State Institutions
All institutions	8%	9%
Research Universities	9%	6%
Doctoral Institutions	6%	9%
Comprehensive Colleges and Universities	7%	11%
Liberal Arts Colleges	10%	3%
Two-Year Colleges	7%	9%
Specialized Institutions	2%	17%

SOURCE: Appendix Table 2.

TABLE 4. *MINORITY ENROLLMENT AS A PERCENT OF STUDENTS ENROLLED IN HIGHER EDUCATION, TEN MOST POPULOUS STATES, FALL, 1972*

State	Minority Enrollment As Percent Of Total Enrollment	
	State	Independent
California	19%	15%
New York	16%	8%
Pennsylvania	7%	5%
Texas	18%	21%
Illinois	14%	11%
Ohio	8%	10%
Michigan	10%	11%
New Jersey	15%	8%
Florida	12%	15%
Massachusetts	5%	6%

SOURCE: *Racial and Ethnic Enrollment Data From Institutions of Higher Education*, U.S. Dept. of Health, Education & Welfare, Office for Civil Rights, OCR-74-13, Fall, 1972, pp. 83-86, figures rounded to nearest percent.

in the two sectors in individual states. Table 4 shows that in the ten most populous states, the percentage of minority enrollment was higher in independent than in state institutions in five of the states and higher in state than in independent institutions in the other five. The key point, however, is that with the exception of four states—Califorinia, New York, New Jersey (higher in state institutions) and Ohio (higher in independent institutions)—the differences are simply not significant. Nevertheless, because of the lower family incomes of minority students, it is surprising and impressive that high tuition independent colleges enroll about the same percentage of such students as do low tuition state institutions.

Retention. In assessing the public services rendered by educational institutions, it is important to look not only at the composition of their student bodies, but also at the effectiveness of the institutions in educating those students. Data on retention rates, albeit imprecise and fragmented, provide some clue to the effectiveness of education. The performance of independent institutions, shown in Table 5, is somewhat better than that of state institutions. The National Commission on the Financing of Postsecondary Education commented:

> There appears to be little difference in dropout rates at the lowest income level among types of institutions, despite substantial differences in tuition charges. As the income level rises, however, the dropout rate falls, indicating some relationship between opportunity and income. More noticeable is the increasing difference in dropout rates between public and private institutions at the higher income levels. Private institutions, despite their higher charges, have higher completion rates than public institutions.[21]

The Commission's explanation is not wholly satisfactory: state institutions are "required to be more responsive to a broader range of students and student interests, and this may explain their lower completion rates." [22] A more complete explanation would have to take into account factors such as admission requirements, faculty advising, counseling, transfer data, size of classes, and sense of community—in short, the institutions' care for their students. Such care may help to explain the higher retention rates of independent institutions.[23]

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[21] *Financing Postsecondary Education in the United States*, The National Commission on the Financing of Postsecondary Education, Washington, D.C., U.S. Government Printing Office, 1973, p. 156.

[22] *Ibid.*

[23] In another study which compared the percentage of entering freshmen at independent and state institutions who received baccalaureate degrees within four years, the data indicate that the independent sector does very well. In that study the data were controlled for variables such as family income, race, and scholastic

TABLE 5. *DROPOUT* RATE OF STUDENTS IN CLASS OF 1970, BY SELECTED FAMILY INCOME LEVELS AND TYPE OF INSTITUTION*

Institutional Type	Income Level			
	Under $4,000	$10,000-$14,999	$20,000-$24,999	All Levels
State				
Universities	21%	25%	17%	25%
Other Four-Year	24%	23%	20%	23%
Two-Year	26%	31%	36%	30%
Independent				
Universities	21%	16%	13%	15%
Other Four-Year	23%	16%	15%	18%
Two-Year	24%	28%	17%	24%
All Institutions	24%	24%	19%	24%

* Dropout is defined as a student who is out of school, temporarily or permanently, without having obtained an associate or bachelor's degree.

SOURCE: *Financing Postsecondary Education in the United States,* The National Commission on the Financing of Postsecondary Education, Washington, DC, U.S. Government Printing Office, 1973, p. 157, figures rounded to nearest percent.

Degrees Awarded. Data on the number and kinds of degrees conferred by independent institutions provide additional evidence of the services the independent sector renders to both its students and the public. Although three-quarters of all higher education enrollments are in state institutions, independent institutions educate over 40% of American doctors and dentists and almost 60% of lawyers. (See Figure 2.) In addition, independent institutions confer about one-third of all bachelor's, master's, and doctoral degrees. (See Figure 3.) The data on degrees conferred, particularly when compared to the proportionately smaller enrollments in the independent sector, are certainly evidence of the remarkable contributions of the independent sector to American society and of the state tax dollars saved due to the services rendered by independent institutions.

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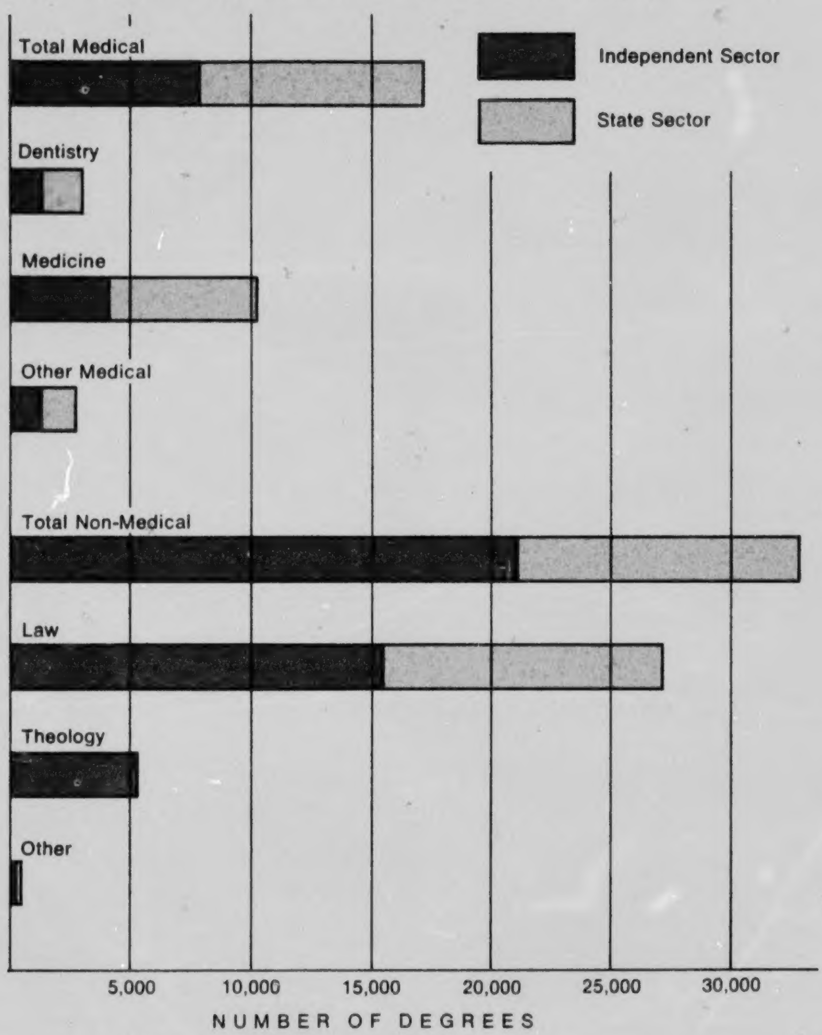
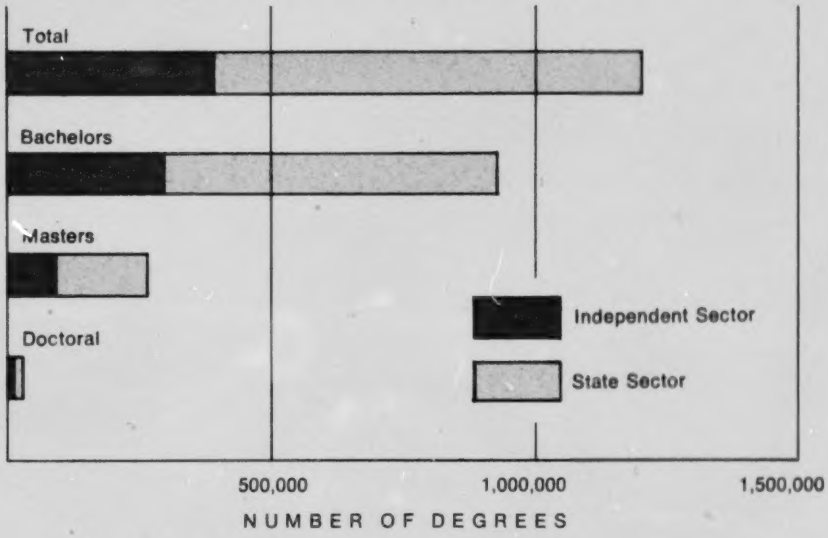
ability in order to avoid imputing superior performance to the independent sector that might actually be the result of differences in the characteristics of students matriculating in the two sectors. See Engin Inel Holmstrom and Paula Knepper, "A Limited Comparison of Student Success in Private and Public Four-Year Colleges and Universities," *Report on a Study of the Private Sector of Higher Education to the U.S. Office of Education* (Washington, D.C.: American Council on Education, 1976).

FIGURE 2: *NUMBER OF PROFESSIONAL DEGREES CONFERRED BY STATE AND INDEPENDENT INSTITUTIONS, 1972-73*



SOURCE: Calculated from Marilyn McCoy, *et. al.*, *State Financial Support of Higher Education: A Framework for Interstate Comparisons*, November, 1975, National Center for Higher Education Management Systems at Western Interstate Commission for Higher Education, Boulder, Colorado, pp. 223-226.

FIGURE 3: *NUMBER OF BACHELORS, MASTERS AND DOCTORAL DEGREES CONFERRED BY STATE AND INDEPENDENT INSTITUTIONS, 1972-73*



SOURCE: Calculated from Marilyn McCoy, et. al., *State Financial Support of Higher Education: A Framework for Interstate, Comparisons*, November, 1975, National Center for Higher Education Management Systems at Western Interstate Commission for Higher Education, Boulder, Colorado, pp. 216-222.

Economic Impact on Communities

The economic impact of independent institutions on the communities in which they are located is considerable. In some cases, independent institutions are the largest employer in their community. They contribute to the community directly in terms of dollar expenditures and employment, and they draw to the community students and visitors who themselves contribute substantial sums to the community's economy.

The data for United Methodist-related institutions illustrate the point. In 1975-76, those institutions, excluding seminaries, employed almost 11,000 faculty, educated about 177,000 students, and spent almost one billion dollars. In addition to monetary expenditures, faculty, students and staff contributed valuable voluntary services to their communities.

A recent study of independent higher education in Indiana demonstrated the economic impact of the 32 independent colleges and universities in that state. In the fiscal year 1973, direct expenditures by the institutions, their faculty and staff, students, and visitors amounted to $169 million, of which 90% was spent in the communities in which the institutions were located. The 32 schools directly employed 9,600 people and indirectly supported approximately 20,000 additional jobs in the state.[24]

The Indiana data suggest the extent of the economic impact independent institutions have on communities and states. Similar data have been developed by other state associations of independent colleges. The demise of individual independent institutions would have a dire effect on the economies of the communities in which they are located, including local financial institutions holding notes for institutional debt.

Impact on Small Towns and Rural Areas

The federal government is committed to reviving rural America in order to reverse the flow of people from the country to the city. The Department of Agriculture, for instance, sponsors numerous programs targetted toward economic and community development in rural America, and the National Endowment for the Arts and the National Endowment for the Humanities sponsor programs to reach these areas. These agencies spend millions of dollars each year to provide cultural and community services.

Independent colleges in small towns and rural areas contribute to that national effort by increasing the vitality of those communities. They provide unique cultural and economic advantages without which many communities would be diminished and could attract neither industry nor inhabitants. Staff of the Senate Agriculture Committee and personnel from the Department of Agriculture have indicated that the presence of a college tends to improve the health of rural communities. Businesses, for instance, consider the presence of a college to be a positive factor in selecting communities in which to locate. [25]

The advantages of a college to a small community are psychological, physical, economic, and cultural. Psychologically, many people are proud of the presence of a college in their community; economically, the college provides jobs and money for the local economy; physically, it provides facilities for use by community organizations; and culturally, it provides programs in art, music, and other fields that would otherwise be unavailable to local residents. All of this is done at little or no cost to the government and provides substantial support to the maintenance of small-town and rural America.

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[24] W. W. Jellema, *Economic Impact* (Indianapolis: The Study of Independent Higher Education in Indiana, January 1975), p. I-2. It was estimated that after taking account of the "multiplier" effect, in-state expenditures generated by these direct expenditures were $252 million.

[25] Private discussions with National Commission staff.

Independent colleges can have a particularly strong impact on the economies of small towns and rural areas. United Methodist-related institutions illustrate this impact. Thirty-seven of the four-year and eighteen of the two-year United Methodist-related institutions are located in towns of 50,000 or less which are not suburban areas—communities which can be characterized as rural. In 1975 these institutions enrolled over 45,000 students, employed more than 3,000 faculty, and had direct institutional expenditures of almost $190 million. If expenditures by faculty and staff members, students and visitors are added to direct institutional expenditures, the direct economic impact of these institutions would probably approach $700 million a year.[26]

A new pattern of population migration may be occurring in America. Between 1970 and 1973, for the first time in 40 years, the population grew faster in nonmetropolitan than in metropolitan counties. That trend reversed a historical pattern of in-migration to urban areas.[27] One major study that attempted to determine the reasons for population flow into nonmetropolitan areas found the presence of senior state colleges and universities to be a significant factor. The population of counties with a state college or university grew by 5.8% between 1970 and 1973, well above the average for other nonmetropolitan counties. Although independent college data were not analyzed, the author did suggest that some independent institutions have a similar positive effect in attracting people to nonmetropolitan areas.[28]

Key Characteristics of the Independent Sector

To truly appreciate the contributions of independent higher education to American society, one must also be aware of the special characteristics of independent institutions.[29] One of the most striking differences between independent and state institutions is the relatively small size of most independent colleges. In 1972-73, over half (56%) of independent institutions had enrollments of less than 1,000 while less than a quarter (23%) of state institutions had student bodies of that size. (See Table 6.) At the other end of the scale, 15% of the state institutions, compared to only 2% of the independent institutions, had 10,000 or more students. Most significantly, the average enrollment at independent colleges was under 1,400 students compared to an average of almost 5,000 at state institutions.[30]

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[26] This estimate is based on the Indiana study which showed direct institutional expenditures to be about 27% of total college related expenditures. The total impact resulting from the multiplier effect would be even greater.

[27] C. L. Beale, *The Renewal of Population Growth in Nonmetropolitan America*, Washington, D.C., Economic Development Division, Economic Research Service, U.S. Department of Agriculture, ERS-605, June 1975, p. 3.

[28] *Ibid.*, p. 10.

The enrollment distribution of United Methodist institutions was parallel to that of the independent sector as a whole. Although there were pro-

TABLE 6. *ENROLLMENT IN INDEPENDENT, STATE AND UNITED METHODIST INSTITUTIONS, EXCLUDING SPECIALIZED INSTITUTIONS, 1972-73*

Enrollment	State Institutions	Independent Institutions	United Methodist Institutions
Under 500	8%	29%	17%
500-999	15%	27%	40%
1,000-2,499	26%	29%	31%
2,500-4,999	19%	8%	5%
5,000-9,999	17%	5%	5%
10,000 or more	15%	2%	2%
Total	100%	100%	100%
Number	1,333	1,136	104

SOURCE: Computed from Elaine H. El-Khawas, "Public and Private Higher Education: Differences in Role, Character and Clientele," *Report on A Study of the Private Sector of Higher Education to the U.S. Office of Education*, Washington, D.C., American Council on Education, 1976, Table A-1, p. 72 and Table 1, p. 11.

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[29] Of the 3,055 higher education institutions in the 50 states and American possessions and territories in 1975-76, 1,454 were state sponsored and 1,601 were independent. Among the independent institutions, 786 were affiliated with religious organizations: 501 with various Protestant denominations; 247 with the Roman Catholic Church; 24 with Jewish organizations; and 14 with other religious groups. National Center for Education Statistics, *Education Directory: Colleges and Universities, 1975-76*, U.S. Government Printing Office, Washington, D.C., 1976, Table III, p. xxix. As of fall, 1975, there were 107 institutions related to The United Methodist Church.

[30] Judith Irwin, *The Campus Resources of Higher Education in the United States of America: A Taxonomy of Types and a Geographical Distribution* (Washington, D.C.: Academy for Educational Development, 1973), p. 13.

portionately fewer United Methodist-related institutions with enrollments under 500 and more with enrollments between 500 and 999, the enrollment profile of the United Methodist colleges was otherwise almost identical to that of the whole independent sector.[31]

Institutions in the state and independent sectors differ not only in their size but, as Table 7 shows, in their type. Using 1970 data, the Carnegie Council classified all higher education institutions and found that state institutions were highly concentrated in two groups, two-year institutions and comprehensive universities and colleges. Those two groups included 89% of all state institutions compared with only 35% of all independent institutions. On the other hand, 59% of the independent institutions, compared with 2% of the state institutions, were liberal arts colleges. Nine percent of all independent institutions were related to The United Methodist Church and they were distributed across institutional

TABLE 7. *DISTRIBUTION OF INSTITUTIONS BY TYPE (SPECIALIZED INSTITUTIONS EXCLUDED), 1970*

Type*	All Institutions	State Institutions	Independent Institutions	United Methodist Institutions
Doctoral Granting Institutions	7%	9%	6%	8%
Comprehensive Colleges and Universities	19%	25%	13%	13%
Liberal Arts Colleges I	6%	—	12%	9%
Liberal Arts Colleges II	24%	2%	47%	52%
Two-Year Institutions	44%	64%	22%	18%
Total	100%	100%	100%	100%
Number	2,406	1,249	1,157	106

* The category "Doctoral-Granting Institutions" includes four separate Carnegie Commission categories: Research Universities I, Research Universities II, Doctoral-Granting Universities I, and Doctoral-Granting Universities II. The category "Comprehensive Universities and Colleges" includes two Carnegie Commission categories: Comprehensive Universities and Colleges I and Comprehensive Universities and Colleges II.

SOURCE: Appendix Table 3.

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[31] Counted as United Methodist-related institutions are those that were affiliated with the church in the fall of 1975. There were 107 institutions related to the church at that time. Some tables in this volume will present data for only 104 of them, however, because Lawrence University and Green Mountain College are not participating in the National Commission's study. Meharry Medical College is also excluded because it is a specialized institution.

categories in a manner quite similar to that of all independent institutions. In summary, the state sector is characterized primarily by relatively large comprehensive colleges and two-year institutions while the independent sector is characterized by relatively small liberal arts colleges.[32]

Independent and state institutions also differ in their geographical location. Fifty-nine percent of the independent colleges are located in 12 of the 50 states with a particularly high concentration in the middle Atlantic states.[33] A substantial number, especially of the small liberal arts colleges, are also found in the southeast while very few are located in the west.[34] Although independent institutions enrolled 24% of the student population in 1974, 50% of the college students in the northeast, compared to 12% in the far west, were attending an independent institution.[35]

Another major difference between independent and state institutions is their source of revenue. State appropriations are the major revenue source for state institutions, while independent institutions are highly dependent on tuition. In 1972-73, 42% of independent institutions received 70% or more of their total educational and general revenues from tuition and fees. Private gifts are also an important source of revenue for independent colleges.[36]

State and independent institutions also seem to differ in the emphasis placed on individual student development. In a nationwide survey, higher proportions of faculty in independent institutions agreed that it was either essential or very important for their institution to provide for students' emotional development, to foster deeper levels of self-understanding by students, and to develop moral character. This difference may reflect in part the high concentration in the independent sector of liberal arts institutions with a specific mission of undergraduate learning and development. However, comparisons of faculty attitudes in independent and state institutions of similar types, specifically doctoral institutions, comprehensive colleges and universities, and two-year institutions, also showed consistently higher interest in the development of the individual student among faculty members at independent institutions.[37] Evidence for a greater emphasis on student development at independent institutions was also revealed in a survey of seniors who reported greater opportunities for leadership experiences at independent institutions.[38]

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[32] The Federal Government has identified such independent institutions as SPLACS, Small Private Liberal Arts Colleges.

[33] Irwin, *op. cit.*, pp. 16-18.

[34] Elaine H. El-Khawas, "Public and Private Higher Education: Differences in Role, Character and Clientele," *Report on A Study of the Private Sector of Higher Education to the U.S. Office of Education* (Washington, D.C.: American Council on Education, 1976), p. 71.

[35] *The Factbook of Higher Education*, (Washington, D.C.: American Council on Education, 1975), p. 72.

[36] El-Khawas, *op. cit.*, pp. 25-26.

In summary, independent colleges provide educational opportunities not available in state institutions. The greater flexibility of many independent institutions permits them to develop special programs to meet special student needs. In addition, the prototypical American college, the four-year liberal arts institution that focuses on undergraduate education, is found almost exclusively in the independent sector. These institutions generally have small enrollments, faculty concerned with aiding students in their personal growth, and a sense of community fostered by housing students largely in campus facilities. These institutions significantly broaden the educational choices available to American students.

The Financial Condition of Independent Higher Education

Public policy makers have been slow to recognize and address the financial distress of independent higher education. This failure is partly due to the absence of agreement on reliable financial indicators in higher education, to differing auditing practices, and to the difficulty of making economic and enrollment projections. Doubts as to the extent of the problem have also resulted from some studies which suggest the distress is temporary and that conditions will improve.

The staff of the National Commission on United Methodist Higher Education is currently engaged in a comprehensive analysis of the financial health of United Methodist-related institutions. Because United Methodist institutions are a very representative sample of independent institutions, that analysis will be a useful indicator of the financial well being of the independent sector as a whole. The analysis of United Methodist-related institutions will employ both current fund and fund balance data from 1969-70 through 1974-75 and thus provide an excellent picture of both current financial position and trends over a period of several years. The financial analyses will be supplemented by enrollment and staffing data.

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[37] El-Khawas, *op. cit.*, Table A-6, p. 80.

[38] *Ibid.*, p. 79.

Although the National Commission's analysis has not, at the time of this writing, been completed, many other studies have pointed out the unstable financial condition of many higher education institutions. An analysis by The National Commission on Financing Postsecondary Education summarized many of them, several of which are worthy of special note.[39]

After a study of the financial condition of 41 selected colleges and universities, Earl Cheit projected in 1971 that over 60% of the colleges and universities in the United States were headed for financial trouble.[40] Nineteen percent of all colleges and universities were already encountering financial difficulty, and an additional 42% were on the way to financial trouble. A follow-up study two years later[41] found that some of these institutions had, at least for the time being, been able to alleviate their problems through cost control measures, but many undertook one-time cuts and other short term measures which could not be sustained or repeated indefinitely.

The National Commission on the Financing of Postsecondary Education analyzed data on the rise and fall of the independent institutions. Between 1961 and 1972, 136 independent institutions closed. Seventy-eight of them were two-year and 58 were four-year institutions. The Commission found that independent two-year institutions were closing at an annual rate of more than 7% and four-year institutions at a rate of about 1.5%. They concluded that if current trends continued, the number of independent institutions would obviously decline considerably during the following ten years.[42]

More recent statistics confirm that the attrition of the independent sector has continued. Between January 1970 and June 1975, seventy-seven independent colleges—including 49 four-year colleges—disappeared as separate entities. Of these, 55 closed entirely; 13 merged with other institutions; and 9 became state institutions.[43] Even though there may have been a few new institutions established, their existence does not alter the significance of these figures.

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[39] *Financing Postsecondary Education in the United States*, The National Commission on the Financing of Postsecondary Education, Washington, D.C., U.S. Government Printing Office, 1973, pp. 415-419.

[40] E. F. Cheit, *The New Depression in Higher Education*, (New York: McGraw-Hill, 1971).

[41] E. F. Cheit, *The New Depression in Higher Education—Two Years Later* (Berkeley: Carnegie Commission, 1973).

[42] *Financing Postsecondary Education in the United States*, *op. cit.*, p. 195.

Several recent studies show that the independent sector as a whole faces a serious and continuing financial problem and that many institutions have been able to cope with financial pressures only by actions that tend to undermine educational quality. Lyle H. Lanier and Charles J. Andersen studied the impact of the economic difficulties of the years 1972 to 1975 on the financial condition of colleges and universities of various types. After analyzing financial and enrollment data from a sample of 226 independent and 144 state institutions, they concluded that "progressive deterioration has been occurring in the financial condition of higher education as a whole in recent years." [44] Despite the lag in faculty compensation, instructional costs grew faster than the inflation rate for the economy as a whole, and the resulting problems were generally greater at independent than at state institutions. Constant dollar expenditures per student declined, meaning that even institutions which managed to balance their budgets probably did so in ways that will have long run negative effects on academic programs and quality of instruction. Many institutions, however, were not able to balance their budgets. In 1974-75, 34% of the independent institutions, compared to about 16% of the state institutions, operated in the red.[45] Lanier and Andersen concluded that neither improved budgeting nor other managerial techniques can solve the basic problems of higher education finance and called for an intensive study of the special problems of higher education.[46]

Howard R. Bowen and W. John Minter are engaged in a continuing study of a representative sample of 100 independent four-year institutions.[47] In their first report, they concluded that 27% of the institutions they studied were "in a condition that could be described as serious trouble." [48] In their second report, they noted that in 1974-75 current revenues per student, measured in constant dollars, declined by 2.4% in the independent sector as a whole.[49] Although most institutions had been able to balance their budgets, they did so primarily by keeping faculty salary increases below the rate of inflation, increasing workloads, and, the authors believe, deferring some educationally essential expenses such as plant maintenance and library acquisitions.[50] Private gifts were also important in balancing budgets, a fact cited as a "source of concern" by Bowen and Minter because gifts are a precarious source of income, and the use of gifts to meet current expenditures slows endownment growth and thus impairs long-run financial security.[51] State and federal programs of aid to both students and institutions were important factors in institutional survival as were careful management and a continuing ability to attract both private gifts and students. Nonetheless, Bowen and Minter concluded that "every serious observer of private higher education knows that the position of private universities and colleges is precarious." [52]

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[43] E. T. Smith, Press Release, National Council of Independent Colleges and Universities, June 1975.

[44] Lyle H. Lanier and Charles J. Andersen, *A Study of the Financial Condition of Colleges and Universities: 1972-1975* (Washington, D.C.: American Council on Education, 1975), p. 75.

[45] *Ibid.*, pp. 35, 37.

[46] *Ibid.*, p. 79.

[47] Excluded from their sample are major research universities, two-year colleges, and specialized professional schools.

[48] Howard R. Bowen and W. John Minter, *Private Higher Education: First Annual Report on Financial and Educational Trends in the Private Sector of American Higher Education* (Washington, D.C.: Association of American Colleges, 1975), p. 77.

Without a major change in the system for financing independent institutions, their financial problems will almost certainly continue and actually worsen. Current projections indicate a major decline in college enrollments that will seriously affect these institutions.[53] The Regents of the State of New York, for example, estimate that by 1990, full-time undergraduate enrollment may drop by as much as 23% jeopardizing the existence of as many as 80 independent colleges in that state.[54] The anticipated effects of enrollment and financial problems were also shown in a nationwide survey of college presidents conducted by the Carnegie Council in the summer of 1974. Ten percent of the presidents indicated that during the next five years they expected their institutions to undergo radical change such as merger, consolidation, or closure.[55]

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[49] Howard R. Bowen and W. John Minter, *Private Higher Education: Second Annual Report on Financial and Educational Trends in the Private Sector of American Higher Education* (Washington, D.C.: Association of American Colleges, 1976), p. 97.

[50] *Ibid.*, pp. 97-99.

[51] *Ibid.*, pp. 98-99.

[52] *Ibid.*, pp. 99-100. Another recent report, based on analysis of data from over 2,000 institutions, concluded that the financial state of higher education, and particularly independent higher education, was quite bad. While 13.5% of state institutions were classified as unhealthy or relatively unhealthy, a startling total of 86.6% of the independent institutions were thus classified. Although the conclusions reached by this study do not appear totally unreasonable, methodological errors preclude any serious use of the data and conclusions. See, Andrew H. Lupton, John Augenblick, and Joseph Heyison, "The Financial State of Higher Education," *Change* (September 1976), p. 25.

[53] For a more comprehensive analysis of the environment of independent higher education, including enrollment potential, see the National Commission publication, *Toward 2000: Perspectives on the Environment for United Methodist and Independent Higher Education* (Nashville, 1976).

[54] *More Than Survival: Prospects for Higher Education in a Period of Uncertainty*, The Carnegie Council Series (San Francisco: Jossey-Bass, 1975), p. 125. New York's concern about the health of its higher education institutions was demonstrated by the appointment of the Pusey Commission. That Commission concluded that cur-

It is clear that public policy at both the state and federal levels will be a very important factor in the future of independent higher education. The serious problems of independent colleges cannot be solved at the institutional level alone. Although prudent management is clearly needed, there are probably few independent institutions in such a position that internal management decision alone can guarantee their vitality and well-being. If independent higher education is to continue to contribute to society in the ways cited, the relevant public policy issues must be given due attention by policy makers at all levels. Needed are positive actions to achieve these ends.

Public Policy Issues

Current debate on federal and state aid to independent institutions often occurs without any reference to the relevant historical background. That debate can be informed by understanding the way higher education evolved from a system with only one sector, consisting solely of independent institutions, to one with two sectors, consisting of independent and state institutions. An important part of that history is a long tradition of tax-supported aid to independent colleges and universities.*

Historical Development: From One Sector to Two

The current distinction between independent and state institutions was not recognized during the early development of higher education in this country. The typical institution—dubbed by one observer the "state-church college"—was affiliated with a church and under the control of its own governing board which sometimes included public officials appointed by virtue of their office. Despite the church-related and essentially private nature of these institutions, public funds provided

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rent financial distress "will be accentuated by continued increases of costs in the coming years." *Report of the Regents Advisory Commission on the Financial Problems of Postsecondary Institutions*, September, 1975, p. v.

[55] Lyman A. Glenny, John R. Shea, Janet H. Ruyle, and Kathryn H. Freschi, *Presidents Confront Reality: From Edifice Complex to University Without Walls*, A Report for the Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass Publishers, 1976), p. 128.

direct support to many of them in recognition of their public service. Indeed, public funds were important in the establishment and continued support of American institutions of higher education from the very beginning—the founding of Harvard in 1636—and Harvard, Yale, and Columbia might not have survived the Colonial period without support from the Colonial governments.[56] Harvard continued to receive public funds well into the nineteenth century, as did many other independent institutions established in the Colonial era.[57] In some cases indirect subsidies, such as permitting colleges to sponsor lotteries, also contributed to institutional support. Subsidized by both public sources and private philanthropy, the student paid for only a small part of the cost of his education. As one historian pointed out, "The independent, private college, which was the characteristic institution of the period, was preserved by two agencies. One of these was the state. . . . Directly or indirectly, the state paid a significant number of college bills in pre-Civil War America." [58]

Although the origins of the distinction between independent and state institutions can be traced to the late 18th century, it was only in the post-Civil War period that this distinction clearly emerged in the public mind.[59] Several historical factors converged to sharpen the distinction. The Morrill Act of 1862, providing federal support to "land grant" institutions, encouraged states to establish state universities. Yet even under this legislation, two independent institutions—including Baptist-related Brown University—were designated as land-grant colleges. The proliferation of small, church-related colleges in the post-Civil War period,[60] at the same time that state universities were being developed, strained the states' ability to support both—even though it was commonly acknowledged that independent institutions served a public purpose. Gradually, by the end of the Civil War, the states shifted their financial support to state institutions. "Most states abandoned public assistance to the so-called private colleges, but the change was uneven and uncertain, waiting for a general recognition and understanding of the American college as, finally, a private institution."[61] Even so, state legislatures in Vermont, New York, New Jersey, and Maryland continued to provide direct support to independent colleges until as late as 1926.[62] Pennsylvania has never ceased to do so. In the late 19th and early 20th centuries, many state constitutions were amended to preclude state support for sectarian institutions. Direct public funding then became impossible in those states and that development strengthened the distinction between "public" and "private" institutions.

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[56] Rudolph, *op. cit.*, p. 150.

[57] *Financing Postsecondary Education in the United States, op. cit.*, p. 85.

[58] Rudolph, *op. cit.*, p. 150, 152.

[59] Jurgen Herbst, "The 18th Century Origins of the Split Between Private and Public Higher Education in the United States," *History of Education Quarterly* (Fall, 1975), pp. 273-280.

[60] For a history of the development of United Methodist-related institutions during this period, see *To Give the Key of Knowledge* (Nashville: National Commission on United Methodist Higher Education, 1976).

As a result of federal land grant legislation and the gradual transfer of state support from independent to state institutions, state systems expanded rapidly. By 1900, 38% of American college and university students were enrolled in state institutions, and every state but one had at least one tax supported higher education institution. By 1950 tax-funded institutions were educating 50% of all college students and by 1975 enrolled 76% of such students.

Initially, the role of the federal government in higher education was minimal. The U.S. Office of Education, established in 1867, had a small staff with the sole purpose of gathering and publishing information on education. Despite its limited original purpose, the establishment of the Office of Education marked education as a continuing area of federal concern. Other important federal actions towards the end of the nineteenth century were the Hatch Act of 1887 which provided support to the states for "practical research" and the Second Morrill Act of 1890 which authorized federal expenditures to support the teaching of specific subjects including agriculture, engineering, and the natural sciences. Federal higher education policies during and immediately after the First World War included provision of matching funds for agricultural and home economics extension services, support for vocational education of unemployed veterans, and selling war surplus materials to colleges and universities at very low cost. During the Depression federal programs provided part-time jobs for college students and financial assistance to state colleges and universities to construct new facilities.[63]

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[61] Frederick Rudolph, *The American College and University: A History* (New York, Vintage Books, 1965), p. 188.

[62] *Ibid.*, p. 189.

[63] Clifton Conrad and Joseph Cosand, *The Implications of Federal Education Policy*, ERIC/Higher Education Research Report No. 1, 1976 (Washington, D.C.: American Association for Higher Education, 1976), pp. 6-7. Conrad and Cosand divide federal policy in higher education into four major periods: 1636-1862; 1862-1945; 1945-1970; and 1970 to the present. See pages 4-10 of their volume for a detailed discussion of policies in each of these periods.

After World War II, federal involvement in education took a variety of forms. The post-World War II era of higher education might be divided into four general phases:

1. The first phase included the provision of a benefit program for veterans— the G.I. Bill—and federal assistance for research in the national interest.

2. The second phase, the post-Sputnik era, focused on the need to develop manpower based on national, especially defense, needs and saw the initiation of a vast program of student loans and graduate fellowships.

3. The third phase, in the 1960s, identified a national goal of student access and equal opportunity and brought forth the major federal student aid programs providing grants, guaranteed loans, and work-study monies for low-income students. At the same time, to facilitate the expansion of institutions, construction monies were provided as were research monies for areas deemed to be of national importance.

4. The fourth phase of federal policy development focused on refining the national goal of equal opportunity or access by launching the Basic Educational Opportunity Grant program as an entitlement for low-income students. At the same time, research monies were provided as were funds for the development of manpower needed in the national interest.

In summary, analysis of almost 350 years of public policy toward higher education reveals several points that should be considered in current discussions. First, current efforts by independent institutions to obtain certain types of public funding have considerable historic precedent. The first universities in this country, all of them independent institutions, were supported to a significant extent by tax funds. Second, the clear distinction between state and independent institutions did not evolve until sometime after the Civil War, and that distinction in no way denied the fact that "private" institutions in fact served public purposes. Third, the purposes and forms of federal and state support for higher education have varied greatly throughout our history as government has responded to changing social needs. In keeping with that tradition, the federal and state governments have a responsibility to consider carefully current societal needs and to develop programs responsive to them. As in the past, adequate consideration must be given to the role and contributions of the independent sector. Maintenance of the diversity and autonomy of colleges and universities and facilitation of student choice among institutions are clearly issues which must be addressed by the federal and state governments.

Objectives of Public Policy

Today, the two most-agreed-upon objectives for public policy toward higher education, and the first two advocated by the National Commission on the Financing of Postsecondary Education, are: (1) *student access*, which means "each student should be able to enroll in some form of postsecondary education appropriate to that person's needs, capability, and motivation;" and (2) *student choice*, which means "each individual should have a reasonable choice among those institutions of postsecondary education that have accepted him or her for admission." [64]

Because the increasing tuition differential between the independent and state sectors has prevented many students who wished to do so from attending independent institutions, the independent sector has attempted to focus national and statewide attention on the issue of student choice. It is the position of those in the independent sector that federal or state policies which do not fully accommodate and recognize student choice are inadequate. What are needed are policies that facilitate both student access to education and a reasonable choice among institutions. Many students currently enrolled in state subsidized institutions, if given a real financial choice, would probably attend independent institutions. Therefore, such policies would, as a by-product, help to achieve the further public policy goals of maintaining diversity, adequate financing and institutional independence without the need to address or debate those goals directly.

The goals of educational diversity and institutional autonomy cannot, however, be adequately supported only through policies designed to facilitate student choice. Because many government regulations and requirements actually undermine diversity and autonomy, a positive effort by state and federal agencies to reverse the trends toward ever more detailed and more burdensome regulation is necessary if higher education, and particularly independent higher education, is to retain the freedom and flexibility that has contributed so much to the educational enterprise in the United States.

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[64] *Financing Postsecondary Education in the United States, op. cit.*, p. 55. The six additional objectives developed by the Commission were: student opportunity, educational diversity and flexibility, institutional excellence, institutional independence, institutional accountability, and adequate financial support.

Cooperation or Competition?

Current public policy issues raise many questions about future relations between the independent and state sectors of higher education. On some issues they have very similar, even identical, interests, but in other areas they have quite different points of view.

There are two issues, in particular, on which state and independent institutions can stand together. One is the need to limit the heavy hand of government regulation and supervision. One of the strengths of Amercan higher education in both the independent and state sectors has been the ability of its institutions to perform their functions with relatively little government interference. That autonomy has been important both in developing the educational enterprise and in maintaining the spirit and reality of intellectual freedom. Both independent and state institutions are increasingly burdened by growing government requirements and regulations. They could work together to define and argue for an appropriate and limited role for the state and federal governments. Such a role would properly include adequate accountability for the expenditure of public funds without, however, leading to intrusive intervention into the management of colleges and universities. It is only reasonable, of course, that state institutions should be subject to somewhat greater regulation and supervision than independent institutions. The intellectual enterprise, however, whether carried out in the state or independent sector, requires freedom and flexibility—not the fetters of detailed government regulation.

Another area in which many independent and state institutions have common interests is a desire to eliminate current restrictions on the ability of students to use state scholarships wherever they wish. Both state and independent institutions would benefit by being better able to attract students from outside their own states. The quality of higher education would be increased by expanded competition that was not limited to institutions within a single state, and students would benefit from free choice and the opportunity to attend institutions with more cosmopolitan and diverse student bodies.

The area in which the state and independent sectors may come into conflict is competition for public funds. An all-out campaign by the independent sector for public funds may result in a confrontation with the state sector. There is, indeed, some evidence that large state institutions and their associations are prepared to oppose policies that would result in more funds going to independent institutions and will launch a counterattack calling for lower or even no tuition in state institutions.[65] In addition, several of the recent law suits challenging state aid to church-related institutions appear to have state sector support behind them.

Whether there will be a political battle over the distribution of funds to higher education will depend in large part on the position taken by the state sector. In the past, state institutions and their associations have not taken a strong position acknowledging and supporting the important role of independent higher education in this country. If state systems do not welcome and accept the contributions of independent higher education, then the independent colleges and universities have little choice but to launch more intense political activities in their search for federal and state funds. If state sector interests resist efforts by the independent sector to achieve a fair share of public funds, confrontation will be inevitable.

If a major battle between the state and independent sectors does develop, state institutions may well, from their point of view, be damaged. The independents have emphasized the need to develop programs to reduce the tuition gap by providing funds either to students or directly to independent institutions. They have not generally argued that tuition in state institutions should be raised, preferring the other routes to lessening the gap. If the battle should be joined, however, it seems almost inevitable that some will raise the question of whether it is really a reasonable use of scarce public funds to provide a large tax subsidy to every student attending a state institution when many students are fully able to pay the real cost of their education. One might well construct an argument for reducing state subsidies to institutions, devoting most public higher education funds to students with financial need, and allowing the students and their families to decide at what institutions those funds will be used.

Efforts by the independent sector to obtain public funding may also lead to conflict with elementary and secondary schools which are pressing the states for additional support. There are no easy answers to such conflicts, for the American people cannot afford mediocre schools at any level. What is required are policies and funding levels at the local, state, and national levels that will assure adequate support for all levels of education.

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[65] See the letter from Alan Oster, Executive Director, The American Association of State Colleges and Universities, published in *The Wall Street Journal*, Friday, June 25, 1976, p. 6. In his letter Oster argues the case for public support of state as opposed to independent institutions. See also the initial publication of the National Coalition for a Lower Tuition in Higher Education, *The Low Tuition Fact Book: Eight Basic Facts About Tuition and Educational Opportunity.*

Summary

Independent colleges perform a major public service for our society. The services rendered by these institutions include: fostering cultural pluralism; maintaining diversity in higher education; minimizing state expenditures for higher education; serving a broad cross-section of college students, including low-income and minority students; conferring a substantial proportion of professional degrees; and contributing to the economic and cultural well-being of the communities in which they are located, especially rural areas. In order to assure the continued service of independent colleges, public policies affecting higher education must be carefully evaluated and the national goals of access and choice supported. It is the responsibility of public officials at all levels of government to help preserve the social contributions of the independent sector.

2. Preserving Diversity and Autonomy in Higher Education

One of the hallmarks of American higher education has been its diversity, a diversity promoted by the relative autonomy of higher education from governmental control. The independent sector of higher education has played a vital role in maintaining that diversity and autonomy. Those traditions are now being threatened, however, both by the financial pressures which may ultimately cause many independent institutions to close—thereby eliminating much of the diversity in the system—and also, more directly, by governmental intervention into the lives of colleges and universities.

Some forms of intervention are intentional and reflect conscious choices by policy makers. Others are unintended—and often even unrecognized—consequences of decisions at the federal or state levels of government. Colleges and universities can be seriously affected both by policies directed specifically toward them and by other policies—for instance, tax policy—that are not thought of as higher education policies but which, nonetheless, directly affect higher education institutions. Officials at all levels of government should carefully assess the impact of their policy decisions on higher education in order to avoid serious harm to American colleges and universities.

Government Regulation

One of the most serious problems faced by colleges and universities is the continuing increase in government regulation. Difficulties are caused both by the extent of regulation and by the large number of agencies involved. Some idea of the complexity of the governmental environment in which colleges and universities must operate is conveyed by the fact that in the federal government alone, there are 439 separate authorities that affect postsecondary education.[66]

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[66] Robert C. Andringa, "Is Congress the Problem or the Solution?" *Change* (April, 1975), p. 28.

Federal and state requirements for the collection of various types of information and the implementation of assorted regulations are becoming very onerous for many institutions. In some cases the regulations, though well intentioned from the perspective of a legislature or agency, make it difficult for institutions to chart their own destinies. The autonomy of an institution can be seriously undermined by excessive government intervention. In addition, the time and effort required to respond to more and more government requirements adds significantly to the administrative burdens and costs of colleges. Although these difficulties assail both state and independent institutions, the latter, already financially strapped, are especially disadvantaged by such requirements. Many simply do not have the funds to cover the administrative, reporting, and data gathering costs imposed by various agencies.

One of the serious concerns raised by many institutions, particularly those from the independent sector, is the basis on which the government asserts its regulatory power. The recent controversies over affirmative action and Title IX regulations manifest the concern. For some time, it was generally agreed that unless an institution received direct federal support, certain government regulations could not be applied to it. Now, however, the government defines a "recipient institution" as one that receives *any* funds, directly or indirectly, including student aid. Thus, if an institution is involved in any way with government programs, even if its only involvement is the receipt by its *students* of federal student aid such as BEOG grants or veterans' benefits, it is subject to Tiltle IX regulations. This premise could become the springboard for other governmental regulations that would intrude on institutional management.

Independent sector concern about encroachments on institutional autonomy are increased by the way in which federal agencies extend their authority. An editorial in *Science* noted that local agents often extend regulations in ways that may have been quite unanticipated by the Congressmen who passed the relevant laws. Local officials of the HEW office in San Francisco, for instance, insisted that college employees paid from a federal project account for all of their time and that the schools change their payroll systems to provide for such accounting. Letters of credit would be withheld from institutions that did not comply. *Science* notes that there is a growing tendency to seek compliance by setting a short deadline and issuing an ultimatum that grants and contracts will be cut off if the deadline is not met.[67]

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[67] "Federal Intervention in Universities," *Science* (October 1975), p. 221.

Still another example of the difficulties created for higher education institutions by federal agencies with the responsibility of enforcing laws was the attempt of the Department of Health, Education, and Welfare to end all federal higher education aid to the State of Maryland on the grounds that its higher education system was segregated. Although there can be no dispute with the goal of assuring desegregation, a problem arose because HEW had not issued regulations governing the desegregation of state college systems. Thus it was impossible for state officials to know what specific rules they were expected to comply with and what standards of evaluation would be applied. In ruling against HEW, because it indeed had not specified what regulations had been broken or what programs had been found to be discriminatory, the U.S. District judge described the government as having acted "arbitrarily and whimsically." [68] It is action of this sort that raises fears among all in higher education about the ultimate results of constantly increasing government regulation.

Institutional Autonomy

The autonomy of independent colleges is threatened by the extent of federal and state regulation. Many observers believe that with the advent of state coordinating agencies, there has been a considerable loss of institutional autonomy by state institutions. Some state coordinating agencies are beginning a serious review of programs, resulting in some cases in a diminution of individual programs at the institutional level. As coordinating agencies in some states are given more authority over independent institutions, a similar loss of autonomy may occur in the independent sector. At the federal level, policies related to affirmative action have affected the basis and nature of both personnel decisions and admissions policies. In addition, all institutions have been affected by the need to conform their data-gathering efforts to the often conflicting requirements of various regulatory and coordinating agencies.

Many colleges and universities are beginning to protest against what they see as unwarranted interference in their institutional life. One of the most vocal critics has been Dallin H. Oaks, President of Brigham Young University. He has pointed out the strong tendency simply to extend to the independent sector regulations that were designed to assure the accountability and proper supervision of state institutions by state officials. The extension of such supervision to independent institutions, financed largely by private—not state—sources, undermines their autonomy and tends to eliminate the distinction between the sectors.[69] All members of the higher education community should share this concern about the effects of excessive government regulation on the freedom of American colleges and universities.[70]

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[68] Anne C. Roarke, " 'Official Lawlessness,' States Call HEW Action," *The Chronicle of Higher Education*, September 7, 1976, p. 13.

Costs and Administration

One effect of government regulation that is felt by all colleges and universities is increased costs and greater complexity of administration. Higher education institutions have had to augment their administrative staffs to cope with the increased regulations, monitoring and reporting requirements of both federal and state agencies. Indeed, one of the signs of the times for higher education is that the costs of administration have increased dramatically compared with the costs of instruction. This increase is due in large part to the additional staff required to implement government regulations, programs and reporting requirements.

The cost to institutions of government programs and regulations has become so great that the outgoing U.S. Commissioner of Education, Terrel H. Bell, commented on them in an interview shortly before he left office. He noted that one change in federal policy that he had sought unsuccessfully was an increase in the allowances given to colleges and universities for the administrative costs of federal programs. He declared:

> We are putting upon the institutions administrative burdens and requirements to carry out activities that cost them money, and that are plain and simple and clear federal responsibilities. We don't provide anywhere near the compensation to which the institutions are entitled.[71]

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[69] Dallin H. Oaks, "Problems in the Public and Private Sectors," Snow College Commencement Address, Ephraim, Utah, May 28, 1976. At the 1976 annual meeting of the National Association of College and University Attorneys, Oaks called for American colleges and universities to defend themselves against unwarranted interference by government agencies. He argued that the First Amendment can be used to protect academic institutions against excessive government regulation and that a judicial basis already exists for asserting "a First-Amendment protection of education." Dallin H. Oaks, "A Private University Looks at Government Regulations," a speech delivered to the National Association of College and University Attorneys, Dallas, Texas, June 18, 1976.

[70] For further comments on the dangers of excessive regulation, see John C. Honey, "Is Democracy Doing Us In? The Federal Government and Institutions of Higher Education," paper delivered at the annual meeting of the American Society for Public Administration, April 20, 1976; "A 1976 Declaration of Independence," *The Chronicle of Higher Education*, April 19, 1976, p. 5—a protest by the presidents of four universities located in Washington D.C. against excessive government interference in the operation of their institutions; Charles B. Saunders, Jr., "Regulating the Regulators," *The Chronicle of Higher Education*, March 22, 1976, p. 32.

[71] Karen J. Winkler, "Education Chief Needs More Clout, Bell Says," *The Chronicle of Higher Education*, July 12, 1976, p. 7.

One example of the problem Bell pointed to was the 3% allowance the federal government provided to an institution for the cost of administering the campus-based student aid programs such as SEOG, work-study, and the National Direct Student Loan program. In order to compensate more fully for these administrative costs, an increase to 5% or $50 per aided student, whichever would be larger, and coverage of BEOG recipients and veterans, was proposed. In the fall of 1976, Congress instead increased the allowance for campus-based programs to only 4% and provided institutions with $10 for each BEOG or Guaranteed Student Loan recipient enrolled. These changes fall far short of adequately compensating the institutions. A study from one higher education association indicates it costs an institution approximately 8% of the total sum of federal dollars it distributes to carry out all of the necessary administrative tasks related to these programs.[72]

The administrative costs of colleges and universities have also been greatly affected by the need to gather and report a wide variety of information in order to show compliance with federal or state requirements. These data gathering requirements have increased dramatically in recent years. The problems created for institutions result not only from the volume of data required but from lack of certainty about the specific data needed to comply with government requirements. For example, there is continuing controversy over the nature of the data which institutions of higher education must gather in order to comply with affirmative action requirements. If an institution has to provide data on each department or school, its data gathering and monitoring requirements, and consequent costs, are substantially increased over those associated with a single institutional summary. Extensive data gathering requirements are particularly burdensome for small institutions that have little institutional slack in either personnel or money. Such institutions are concentrated very largely in the independent sector.

In some cases government regulations and required data collection are prompted, not by widespread, but by limited instances of abuse and violation of policy. An example is the relatively small number of institutions that have abused the Guaranteed Student Loan program and the concentration of those abuses in particular types of institutions. A study by the U.S. Office of Education of default rates on government insured loans found that the likelihood of default varied greatly with the type of institution attended by the student. The differences are indeed startling.

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[72] Cheryl M. Fields, "A Bid to Recoup Compliance Expense," *The Chronicle of Higher Education*, November 17, 1975, p. 13.

As was stated in the report,

> . . . some sense of the magnitude of the difference in default behavior among various sectors can be gained if we take private four-year colleges and private universities as having a base of 100. Using this index, students at four-year public colleges and public universities default at an index level of 117 or at a rate which is 17% in excess of those at private colleges and universities. Students at junior colleges have a default index of 298; those at proprietaries, 390.[73]

The differences in default rates do not simply reflect differences in the backgrounds of the students attending various types of institutions. Although students from low-income backgrounds have a higher default rate than those from higher income backgrounds, their default rate is lower at independent than at state institutions, despite the higher tuition of the former.[74]

Instead of targetted regulations aimed at institutions with poor records, the high default rate on government insured loans was dealt with through regulations that encompass all institutions. These regulations, growing from the offenses of comparatively few institutions, impose excessive burdens on non-offending institutions. Such regulations are particularly galling to the independent institutions whose students have an excellent record of loan repayment.

The burdens of government regulations and reporting requirements are particularly frustrating when it appears that they do little to achieve the goals being sought. A sense of this frustration is found in a statement by the American Council on Education which, along with ten other higher education associations, responded to proposed regulations to eliminate discrimination against handicapped students. The statement reads in part:

> The higher education community feels that the case has not been made to support the proposition that an extensive Federal regulatory scheme is essential to secure the education or rights of handicapped students. If prior experience with such all-embracing antidiscrimination programs is considered, one could reasonably predict that the end result will be sheaves of unread, unnecessary paper, uneven and inconsistent enforcement by Federal field personnel, assumption of antagonistic postures by various affected groups and persons, expenditure of scarce institutional resources on the technicalities of compliance, a staggering backlog of complaints, and the diversion of administrative and faculty talent

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[73] *Federal Student Loan Programs* (Washington, D.C.: American Council on Education, Policy Analysis Service Reports, vol. 1, no. 1, March 1975), p. 15.

[74] *Ibid.*, p. 12.

> from the more basic continuing goal of fashioning innovative and productive means to aiding handicapped individuals in a manner that promotes real progress. . . .[75]

Financial burdens are imposed on colleges and universities not only by programs and regulations aimed specifically at higher education but also by other government programs. Such programs include wage and hour standards, unemployment compensation, social security, regulation of retirement programs, occupational safety and health, environmental protection, equal employment opportunity, equal pay, and affirmative action. A study undertaken by the American Council on Education found that federal programs of this sort cost colleges and universities twice as much in 1975 as they did in 1970 and "have contributed substantially to the instability of costs at colleges and universities from year to year and thus increase their difficulties of financial management and budget balancing." [76] Although the costs of these programs were small in relation to the total operating budgets of the institutions, they had increased at a rate considerably faster than increases in either instructional costs or total revenues.[77]

Many of these social programs are funded through taxes on employment. Although institutions of higher education benefit from exemptions on property, sales, and income taxes, they are subject to the same employment taxes as are other enterprises. Because higher education is a labor-intensive industry, increases in employment taxes tend to affect the financial status of colleges and universities to a greater extent than many enterprises in the profit-making sector. Not only are many other industries far less labor-intensive, but private business can and does pass increased costs on to the consumer. State colleges and universities can look to the legislatures to appropriate funds for increased social security and other taxes. Independent institutions are faced with the dilemma of either absorbing the additional costs by diverting funds from other purposes or raising tuition, thus adding to the price differential between the independent and state sectors. Independent institutions, therefore, are particularly hard-hit by these and other government imposed costs.

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[75] *Higher Education and National Affairs*, June 18, 1976, p. 5.

[76] Carol Van Alstyne and Sharon L. Coldren, *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities*, (Washington, D.C.: American Council on Education, 1976), p. 14.

[77] *Ibid.*, p. v.

Tax Policy

Federal and state tax policies that affect charitable giving have an important influence on the financial status of many colleges and universities, both independent and state. That influence results from the important role philanthropy plays in the support of American higher education. In 1974-75, American colleges and universities received about $2.2 billion in private gifts[78] and about three quarters of that sum went to independent institutions.[79]

Currently, at the state level, a variety of exemptions, deductions, and credits encourage charitable giving. In some states, charitable contributions are deductible on state income tax returns. In others, including Indiana, Michigan, and North Dakota, *credits* on state income taxes are allowed for contributions to certain charities, including institutions of higher education.

At the federal level, independent institutions benefit enormously from tax policy which allows individuals to deduct from their taxable income amounts contributed to charitable organizations, including educational institutions. This policy has recently been criticized, however, on several counts. Some argue that tax deductions for charitable contributions amount to allocating public resources through nonpublic channels—that private persons are, in effect, making decisions about the expenditure of funds that, without the tax deduction, would be collected as tax revenues and be used for the public good by government.[80] It is true, of course, that tax collections would be greater if there were no deductions for charitable gifts. However, the amount of money involved is much less than many might suspect. Since 1968 the Department of the Treasury has made an annual calculation of monies not received because of various tax deductions. The total estimated for fiscal year 1976 was $91.8 billion, only $4.8 billion of which was attributed to the personal income tax deduction for all charitable contributions. The reduction in potential tax revenue due to the charitable deduction was less than that attributed to deductions for state and local taxes, home mortgage interest costs, or pension contributions.[81]

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[78] *Voluntary Support of Education 1974-75* (New York: Council for Financial Aid to Education, 1976), p. 3.

[79] *Ibid.*, calculated from data in Table 3a, p. 6.

[80] See: *Volunteerism, Tax Reform, and Higher Education*, 1975 edition (New York: Council for Financial Aid to Education), p. 12. For a discussion of the difference between the incidence and impact of taxation see: M. J. Graetz, "Assessing the Distributional Effects of Income Tax Revision: Some Lessons from Incidence Analysis," *The Journal of Legal Studies*, vol. IV, no. 2 (1975) pp. 351-368.

Opponents of the charitable deduction who base their opposition on an argument from equity hold that current law offers greater benefit to taxpayers in high income brackets than to those in low income brackets. The progressive tax rate structure means, for instance, that a person in the 50% tax bracket reduces his or her taxes by 50% of the amount contributed while someone in the 20% tax bracket receives a tax reduction of only 20% of the amount contributed. When coupled with other tax preferences, the argument goes, the charitable deduction can result in a wealthy person paying very little in taxes.

The Commission on Private Philanthropy and Public Means (Filer Commission) was established in November, 1973, to examine the philanthropic sector of American society. In its report it responded to the arguments against the deduction for charitable contributions. The Commission pointed out that an argument that emphasizes tax revenues not collected because of the charitable deduction "implies that all income covered by tax laws is government money. It is only in this light . . . that nontaxation can be seen as a subsidy or expenditure." [82] The Commission addressed the equity argument by pointing out that when the charitable deduction was established in 1917, it was based on the principle that income tax should be imposed only on "consumable income." It was agreed that the government should not tax income that was not used for personal advantage or enrichment but devoted to the public good through the instrumentality of a charitable organization.[83] After reviewing the various arguments against the current charitable deduction, the Commission concluded:

> In the context of personal income taxation, the Commission believes it is appropriate to define income as revenue used for personal consumption or increasing personal wealth and to therefore exclude charitable giving because it is neither. . . . We think it entirely appropriate, in other words, for the person who earns $55,000 and gives $5,000 to charitable organizations to be taxed in exactly the same way as the person who earns $50,000 and gives away nothing.[84]

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[81] *Giving in America: Toward A Stronger Voluntary Sector*, Report of the Commission on Private Philanthropy and Public Needs, 1975, p. 108.

[82] *Ibid.*, p. 109-110.

[83] *Ibid.*, p. 106.

[84] *Ibid.*, p. 128.

Arguments against the deduction for charitable contributions continue, however, and they are persuasive for many. In response to these arguments, various proposals for change have been suggested. Some proposals would limit the charitable deduction by excluding a certain percentage of the contribution from eligibility for a tax deduction in a manner similar to the current medical deduction. Other proposals are aimed at equalizing treatment of individuals by converting deductions to credits based on a specific precentage of the gift. A tax credit of 20% of the gift, for example, would mean that each contributor's taxes would be reduced by a sum equal to 20% of his or her charitable contribution. Under the present system the reduction in taxes for the same size gift varies with the individual's tax bracket. If two people each contribute $100 to charity, for instance, and one is in the 20% tax bracket and the other in the 40% bracket, the taxes of the first are reduced by $20 and those of the second by $40.

In reviewing the various tax incentives for charitable giving, the Filer Commission considered a tax credit as an alternative to the current income tax deduction. In a nearly unanimous conclusion, however, the Commission recommended the continuation of the charitable deduction because it provides the best incentive to private giving. They found that a tax credit, depending on the specific provisions of the credit, might, in one version, result in a reduction of federal revenues far greater than any new giving that would be generated,[85] or in another version, somewhat increase contributions to religious organizations but reduce gifts to educational institutions and hospitals by as much as one third.[86] The Commission concluded that the current tax deduction is not only an effective incentive to giving but that it benefits private philanthropy more than it costs the government. For example, it found that between $1.15 and $1.29 in additional contributions is provided to private philanthropy for every dollar of potential tax revenue lost.[87]

Proposals that would reduce the incentive of high income taxpayers to make charitable contributions would have a particularly negative effect on gifts to colleges and universities because institutions of higher education depend more heavily on large gifts from relatively wealthy donors than do most other charities. For example, even though gifts of $5,000 or more represented only 5% of the total number of charitable gifts, they accounted for 75% of the total amount received by institutions of higher

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[85] *Ibid.*, p. 139.

[86] *Ibid.*, p. 133.

[87] *Ibid.*, p. 129.

education.[88] The Filer Commission found that if the charitable deduction were totally eliminated, gifts to educational institutions and hospitals, to which high-income givers direct a large share of their contributions, would drop by nearly one-half.[89]

Elimination or reduction of the charitable deduction from estate tax returns would also have a very negative effect on higher education. Bequests account for about $300 million of higher education gifts, and in 1970-71 transfers at death furnished about 17% of voluntary support to a set of colleges surveyed by the American Council on Education.[90] The Filer Commission noted that gifts to educational institutions are particularly affected by changes in tax policy and that a change in the law would reduce bequests, "particularly to private colleges and universities, without much being gained in equity or tax revenues." [91]

Equally important, gifts of appreciated property make up one-quarter or $500 million of the voluntary support for higher education.[92] Again, the Filer Commission pointed out that educational institutions would be particularly sensitive to any change in the tax law regarding appreciated property. According to the Commission, overall giving would drop by 3% if the appreciated property allowance were eliminated. However, the greatest proportion of the loss would be borne by educational institutions which could expect an 8% decrease in private gifts.[93]

In arguing for preservation of the appreciated property deduction, the Commission pointed out that the provision for treatment of appreciated property cannot be looked at in isolation. They concluded that it makes "little sense" to subject appreciated property to harsher taxation when donated to charity than when left to heirs at death or distributed in non-charitable gifts during life.[94]

It is difficult to predict what changes, if any, will be made in tax treatment of gifts to charity. There are many voices calling for the removal of tax incentives to charitable giving, but there are persuasive arguments against such changes. The efforts by several states to provide tax credits for contributions to higher education institutions suggest that inducements to giving may even increase. In any event, it is clear that American higher education, particularly independent colleges and universities, depend significantly on voluntary support and that such support is essential to the survival and independence of many institutions. State and federal policy makers should therefore consider carefully the impact on colleges and universities of any changes in the tax treatment of charitable gifts.

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[88] *Financing Postsecondary Education in the United States, op. cit.*, p. 121.

[89] *Giving in America, op. cit.*, p. 133.

[90] *Ibid.*, p. 147.

[91] *Ibid.*, p. 151.

[92] *Volunteerism, Tax Reform and Higher Education, op. cit.*, p. 17.

[93] *Giving in America, op. cit.*, p. 145.

[94] *Ibid.*, p. 146.

A final issue of tax policy is the exemption of the property of educational and other charitable institutions from state and local property taxes. This exemption is coming under critical review, especially in areas with a high concentration of such institutions. Some institutions voluntarily pay for municipal services while in several states legislators have attempted unsuccessfully to require colleges and universities to pay a service fee for municipal services. Elimination of the tax exempt status of property used for educational purposes would have a grave impact on the financial condition of colleges and universities and, therefore, ultimately on the communities seeking to collect additional taxes.

Summary

Higher education in the United States derives much of its strength from the diversity and autonomy of its institutions. That very diversity and autonomy may be undermined, however, by excessive government regulation. The expansion of government regulations and requirements has imposed heavy administrative and financial burdens on many institutions. Particularly hard hit are the small institutions in the independent sector whose resources are limited. In order to assure continued diversity and autonomy in American higher education, government officials should carefully review the impact of their policies on colleges and universities to assure that they do not unintentionally weaken a system that has served us well. Further, whatever particular forms statewide coordination may take in the several states, it is vital that the contributions and potential of independent colleges be adequately taken into account.

3. Promoting Student Choice

In recent years most of the public discussion of equal education opportunity has centered on the question of access. There can be no real equality of access to higher education, however, until individuals can attend the type of institution that best meets their needs. As one commentator pointed out:

> Equal opportunity really is a two-faceted concept. That is to say, first, we should speak of access to and equity in postsecondary education in terms of rates and patterns of enrollment. Secondly, we should speak of access to and equity in type or levels of institution. There are two dimensions vis-a-vis equality of educational opportunity in higher education—choice as well as access.[95]

While there are, of course, many factors that influence students and their families in the choice of a particular college or university, the relative cost of attending alternative institutions clearly plays a major part in such decisions. A report on many studies of the variables affecting choice of an institution found the second most important factor, coming only after the school's reputation, was cost.[96] From the perspective of the individual student, many factors contribute to cost differentials between institutions. Among these are the relative expense of residing on campus as opposed to commuting and the difference between traveling to a nearby compared to a distant institution. Differences in tuition charges, however, are the most important factor in determining perceptions of relative costs. Because of the large tuition gap between most independent and state institutions, independent institutions appear very expensive to most students.

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[95] Richard E. Pasqueira, "Equal Opportunity in Higher Education: Choice as Well as Access," *College Board Review*, No. 97 (Fall, 1975), p. 13, as quoted in Jonathan D. Fife, *Applying the Goals of Student Financial Aid* (Washington, D.C.: American Association for Higher Education, 1975), p. 33.

[96] Fife, *op. cit.*, p. 41. The two other major variables affecting choice were the socio-economic status of the student's family and the student's academic ability and intellectual orientation.

Table 8 compares average nationwide tuition and fees in state and independent institutions in 1965-66, 1970-71, and 1975-76. The relationship between tuition and fees in the state and independent sectors has remained quite stable, with state charges averaging just over twenty percent of independent sector charges. Although the rising costs of education have affected both state and independent institutions, the dollar impact has been much greater in the independent sector. Between 1965-66 and 1975-76, the average increase in tuition at state institutions was $301 compared with an increase of $1,404 at independent institutions. Viewed another way, the data in Table 8 show that in 1965-66 average tuition at an independent institution was about $900 more than at a state institution. In 1975-76 that difference was $2,000, just about the same amount as the average state subsidy to each student in a state institution.

TABLE 8. *COMPARISON OF INDEPENDENT AND STATE SECTOR TUITION AND FEES IN 1965-66, 1970-71, 1975-76*

Year	Tuition and Required Fees		State as Percentage of Independent	Tuition Gap Between State and Independent Institutions
	State Institutions	Independent Institutions		
1965-66	$257	$1,154	22%	$ 897
1970-71	352	1,685	20%	1,333
1975-76	558	2,558	21%	2,000

SOURCE: *Digest of Education Statistics, 1975*, National Center for Education Statistics, Washington, D.C., U.S. Government Printing Office, 1976, Table 121, p. 129.

The resultant tuition gap forces many students who feel that their needs could best be met in the independent sector nonetheless to attend a state institution either because they cannot afford the higher tuition of an independent college or because the price differential is so great that it is difficult to justify spending the additional money. That reaction is easy to understand when one considers that based on the 1975-76 tuition differences, an undergraduate education would cost $8,000 more at an independent than a state institution. To many families that difference seems unreasonable.

Equal educational opportunity should mean that students with similar abilities and interests not only have equal access to some type of higher education, but a reasonably equal degree of choice among institutions.

Given the current size of the tuition gap between independent and state institutions, federal and/or state action is required to reduce the difference and thus promote the goal of student choice.

Who Pays? Who Benefits?

When considering programs for higher education, public policy makers often ask the question, "Who really benefits from higher education—society or the individual?" They ask this question because they believe that the answer to it will help to guide them toward the best policy choices. The underlying assumption is that if it is the individual who benefits, then he or she should bear the primary responsibility for paying college costs, but if it is society that benefits, government has a responsibility to assume much of the cost. The problem with such a question as a basis for making policy choices is that those who ask it often anticipate a simple response. In fact, the answer is clearly that both the individual and society benefit.[97]

When the Carnegie Commission addressed this issue, they asked both who benefits and who currently bears the costs for higher education. In determining the relative costs paid by private and public sources, the Commission considered private costs to be those borne by the family and public costs to be those borne by governmental agencies *and* philanthropy. Family costs included both direct expenditures by students for their education and estimated foregone earnings while they are in college, a methodology generally considered appropriate by economists. The conclusions of the Carnegie Commission were:

> No precise—or even imprecise—methods exist to assess the individual and societal benefits as against the private and the public costs. It is our judgment, however, that the proportion of total economic cost now borne privately (about two-thirds) as against the proportion of total economic costs now borne publicly (about one-third) is generally reasonable.[98]

By establishing "reasonable" proportions, the approach of the Carnegie Commission avoids endless attempts to establish the exact distribution of benefits from higher education and emphasizes that both the individual and society as a whole receive substantial benefit from higher education.

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[97] In a recent study involving a survey of a number of Congressional education leaders including staffs on the education committees and several key Congressional chairpersons, the author suggests that "who benefits" is one of the two key policy issues most often raised. R. L. Farmer, *Higher Education and Its National Spokesmen: A Congressional Perspective*, unpublished doctoral dissertation, Indiana University, July 14, 1975.

[98] *Higher Education: Who Pays? Who Benefits? Who Should Pay?, op. cit.*, p. 3.

Debate over the question of "who benefits" continues, however, because of the assumed implications for public policy. The question is often raised in debates about the proper level of tuition at state institutions. Those who hold the view that it is primarily the individual who benefits from higher education tend to argue that tuition should be raised for those who can afford to pay, particularly in view of the fact that the majority of students from even high income families attend state institutions where the cost of their education is heavily subsidized by taxpayers. Those who believe that it is primarily society that benefits tend to argue for low tuition at state institutions.[90] Along a continuum between these two positions are a number of proposals on the financing of state institutions and higher education as a whole. Generally, advocates for state institutions seek to maintain current enrollments and, hence, urge low tuition while advocates for independent institutions prefer policies that lessen the gap between state and independent tuitions.

The question of "who benefits" also affects debate on proposals to aid independent institutions. Even among those who agree that there is a major social benefit from higher education and that society as a whole should, therefore, bear a substantial part of the costs, some take the position that independent sector students should be responsible for the costs of their education. Such positions are based on the assumption that the individual benefits derived from education in independent institutions flow largely to students from high-income families who can and should pay for their children's education without any governmental assistance. Such a position is based on incorrect notions about the origins of students at independent institutions. As has been shown, their backgrounds, including family income, are very similar to those of students at state institutions. In addition, since the independent sector actually contributes more graduates to our society, especially trained professionals, than one would expect based on its share of enrollments, it is clear that independent institutions serve the same important public purposes as do state institutions. If society benefits from the services provided by its higher education institutions, one must give the independent institutions as much credit as state institutions.

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[90] See *Exploring the Case for Low Tuition in Public Higher Education* (Iowa City: American Association of Community and Junior Colleges, American Association of State Colleges and Universities, and National Association of State Universities and Land-Grant Colleges, in cooperation with The American College Testing Program, 1974).

In summary, the best evidence on the "who benefits" issue is that both individuals and society benefit from higher education and that a precise accounting of the benefits is not possible at this time and may never be possible. The Carnegie Commission allocated ⅓ of the benefit to society and ⅔ to the individual—an allocation that mirrored the portion of costs borne publicly and privately. Whatever the distribution of the benefit, it is the same whether a student attends a state or an independent institution. Proposals for aid to the independent sector must be considered in that light.

Who Does What? Federal and State Responsibilities

Given the federal nature of our system, a key question for policy makers is who should do what? More specifically, what higher education objectives are appropriate for the federal and state governments, respectively, and what policies should be implemented to achieve those objectives? [100]

Historically and constitutionally the states have assumed and been delegated the major responsibility for providing public education. This has been especially true with respect to financing elementary and secondary education for which the federal government provides about 7% of the total funds. Although the federal government provides a much larger percentage of funds for higher education, it is still generally agreed that state and local governments have the primary responsibility for providing general institutional support to state institutions. The question, therefore, is what additional responsibilities for higher education as a whole should be assumed by the federal and/or state governments.

A review of current and proposed federal and state programs suggest five primary areas for government action: (1) improving access to higher education with the eventual goal of universal access—not to be confused with universal attendance; (2) supporting research and research training programs that serve state and national needs; (3) supporting programs designed to meet manpower needs of the American economy; (4) encouraging renewal, innovation, and reform in higher education;

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[100] "Who does what?" was the other major policy issue raised by Congressional policymakers. Farmer, *op. cit.*

and (5) building a healthier higher education industry by improving management and by supporting the independent sector as a good investment in diversity and competition for the state sector.[101] It is this last point, particularly the nature and extent of assistance to independent institutions and their students, that is a major subject of controversy. However, if a reasonable degree of student choice is an objective of public policy, it can be achieved only through programs that will help to reduce the current tuition gap. In the words of the Carnegie Foundation for the Advancement of Teaching: "The basic issue over state support for private institutions is no longer so much whether it should be undertaken at all, but rather, how it should be supplied and to what degree." [102]

Current Student Aid Programs

Many independent institutions have traditionally given scholarships to needy students, and many continue to do so. Independent institutions do not, however, have the resources to make themselves accessible to all students whose educational needs could best be served in the independent sector. Indeed, the combination of rapid inflation and turmoil in the stock market—which affects endowment earnings—has made it increasingly difficult for some institutions to devote as much of their resources to student aid as they did previously. Thus it is largely to gov-

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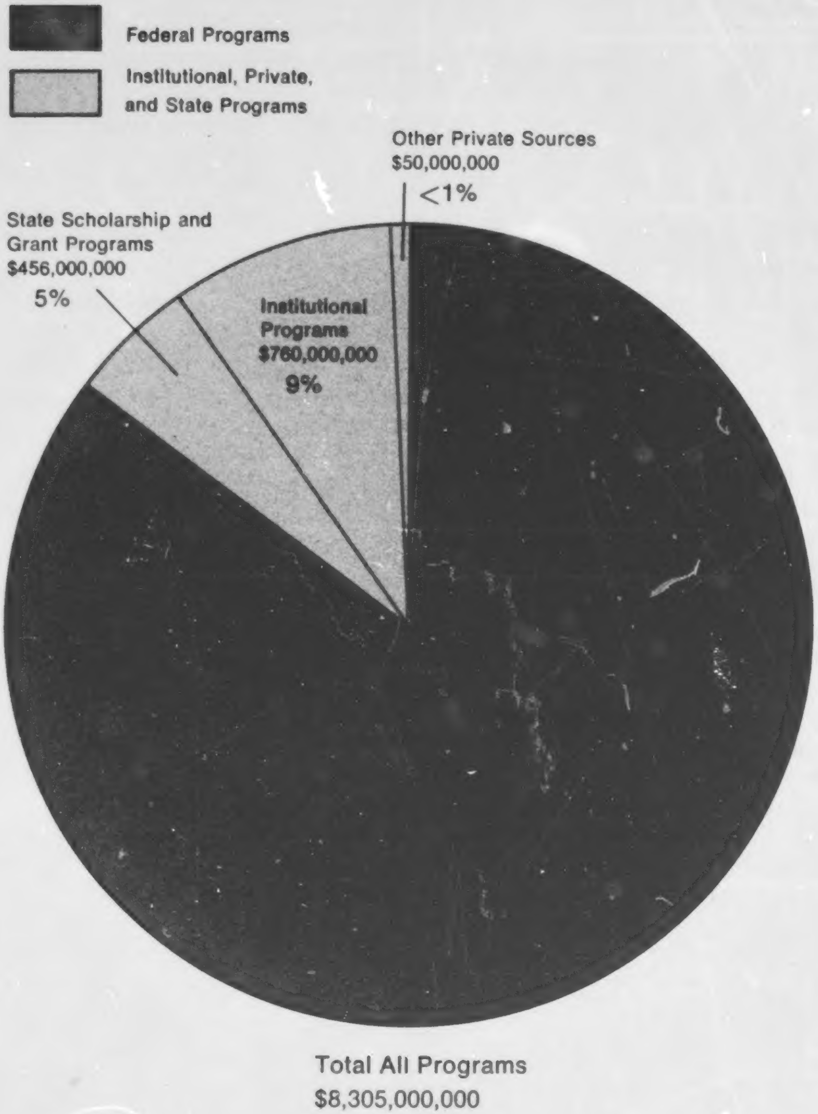
[101] For a further discussion of these issues see, for instance, R. W. Hartman, *The Rationale for Federal Support for Higher Education* (Washington, D.C., The Brookings Institution, 1974), General series, reprint 283, p. 289, and *More Than Survival: Prospects for Higher Education in a Period of Uncertainty, op. cit.*, p. 8.

[102] *The States and Higher Education*, a Commentary of The Carnegie Foundation for the Advancement of Teaching (San Francisco: Jossey-Bass Publishers, 1976), p. 81. One approach, endorsed by several members of The National Commission on the Financing of Postsecondary Education, was suggested by Ernest L. Boyer. While advocating that independent institutions receive their principal support from nonpublic sources, Boyer argued that they should be recognized as "essential educational resources" by each state and that the states should consider direct institutional grants to independent institutions to help support specific educational missions and to assure the full utilization of the educational resources of independent institutions. Full utilization of resources already existing in the independent sector certainly makes much more sense, and would be less expensive for the taxpayers, than mindless duplication of independent sector programs in state institutions. In addition to direct institutional aid, Boyer advocates federal and state assistance to low and middle-income students to help reduce the tuition gap. *Financing Postsecondary Education in the United States, op. cit.*, pp. 361-367. For a taxonomy of aid programs according to the *means* by which assistance is delivered, such as loans or grants, and the *recipients of* assistance, such as students, institutions, or parents, see pp. 235-236.

FIGURE 4: *SOURCE OF STUDENT AID FUNDS, 1974-75*



SOURCE: Calculated from Jonathan D. Fife, *Applying the Goals of Student Financial Aid*, Washington, D.C., American Association for Higher Education, 1975, Table 6, p. 19.

ernmentally sponsored aid programs that students in both the independent and state sectors must turn when seeking financial assistance.

Figures 4 and 5 show the amounts and sources of student aid funds distributed in 1974-75. Of the $8.3 billion total, $760 million was provided by institutions, both state and independent, and $50 million by private sources. The remainder, 90% of the total, was supplied by federal (85%) and state (5%) programs. While general support for higher education may be the responsibility of the states, the federal government has clearly assumed the responsibility for student aid programs.

The largest single source of student aid money was the G.I. Bill which accounted for 39% of all student aid funds and 49% of funds awarded through student based programs. Student based programs award funds directly to students while institution based programs award funds through the financial aid offices of higher education institutions. Veterans' benefits and Social Security benefits combined accounted for 49% of the total and 62% of the student based funds.

From the point of view of the independent sector, the problem with most current aid programs, particularly federal programs, is that they discriminate against students wishing to attend independent institutions because they ignore the tuition gap. Such discrimination has not always been the case. In the early years of the G.I. Bill, for instance, there was an allowance for living expenses and a separate allowance to cover tuition at the institution of the student's choice. Now, however, aid supplied through the G.I. Bill and the Social Security system, *which together account for almost 60% of all federal student aid funds*, provides fixed monthly allowances that do not take into account tuition differences. As a result, few students using the G.I. Bill attend independent institutions. In the spring of 1975 only 17% of veterans enrolled in college were attending independent institutions.[103] Even need-based federal programs do not take tuition differences fully into account. For example, if fully funded, the Basic Educational Opportunity Grant (BEOG) program would provide a maximum of $1,400 per student. Although BEOG grants are limited to no more than 50% of the total costs incurred, it is possible for a student at a state institution to receive a grant that will cover tuition and some living expenses while even the maximum grant would not cover tuition expenses alone at most independent institutions. Because such aid programs do not adequately take the tuition gap into account, they are not only *not neutral* in their application, but are unintentionally hos-

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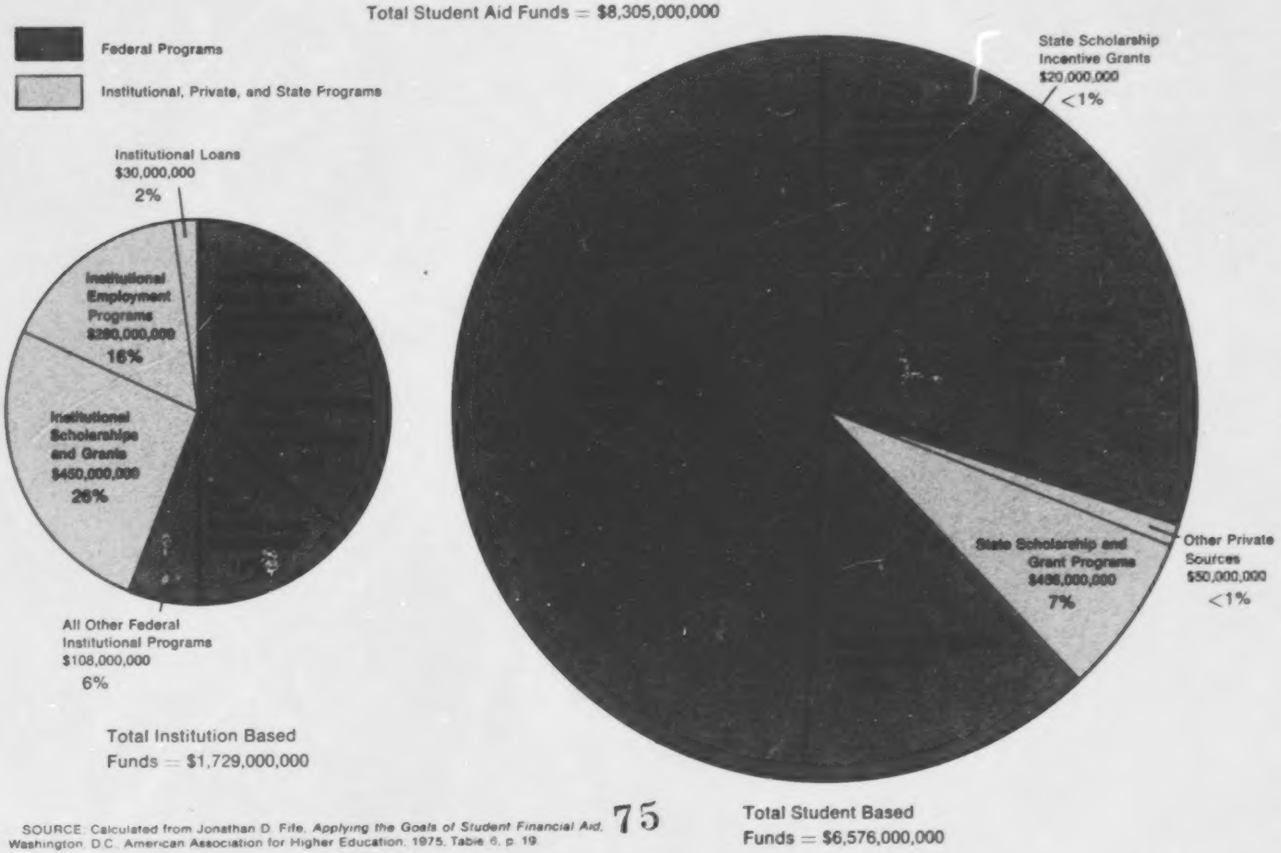
[103] *The Chronicle of Higher Education*, October 14, 1975, p. 11.

FIGURE 5: *TOTAL STUDENT AID FUNDS BY TYPE OF PROGRAM AND SOURCE OF FUNDS, 1974-75.*



SOURCE: Calculated from Jonathan D. Fife, *Applying the Goals of Student Financial Aid*, Washington, D.C.: American Association for Higher Education, 1975, Table 6, p. 19.

tile to independent institutions to the extent that they inevitably channel students primarily into state institutions.

The states are another source of student aid funds. Although the amount of money they provide is small compared to that flowing through federal programs, state scholarship programs have expanded rapidly during the past several years. In 1969-70 only 19 states and territories had student aid programs, and they awarded just under $200 million to 470,000 students. In 1976-77 there are 53 states or territories with aid programs distributing $645 million to 1.1 million students. This represents a 26% increase over funds distributed in 1975-76.[104]

TABLE 9. *STATE STUDENT AID PROGRAMS: NUMBER OF STATES PARTICIPATING, NUMBER OF RECIPIENTS, AND DOLLARS AWARDED, 1969-1976*

Year	Number of States and Territories Participating	Number of Enrolled Recipients	Dollars Awarded, in Millions
1969-70	19	470,800	$199.9
1970-71	21	535,200	236.3
1971-72	23	604,000	268.6
1972-73	29	661,700	315.5
1973-74	31	733,300	364.2
1974-75	37	813,100	440.8
1975-76	48	901,900	510.2
1976-77	53	1,095,300	645.4

SOURCE: *The Chronicle of Higher Education*, October 11, 1976, p. 6.

The federal government, through the State Student Incentive Grant (SSIG) Program, has played an important part in encouraging states to expand their scholarship programs. Established by the Higher Education Amendments of 1972, that program provides grants to eligible students with substantial financial need by matching on a 50/50 basis new grant dollars expended by the states. The SSIG program, which was allocated $19 million in 1974-75, received appropriations of $44 million in both 1975-76 and 1976-77. Although federal matching funds account for only 6.5% of state scholarship awards, they have acted a catalyst for state programs. A survey by the National Association of State Scholarship Programs indicated that at least 15 states would probably not have student aid programs without the incentive provided by federal funds.

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[104] Alaska and Nevada are the only states offering neither grants nor loans. Arizona has a planned program which is awaiting legislative authorization. "States Giving Record Sums to Student-Aid Programs," *The Chronicle of Higher Education*, October 11, 1976, p. 6.

Despite the wide participation in state scholarship programs, most of the funds are highly concentrated in five states. In 1976-77, those states—New York, Pennsylvania, Illinois, California, and New Jersey—are expected to distribute about 66% of all state student aid funds. That is a decrease, however, from 1971-72 when they accounted for 76% of student aid dollars. Three states—New York, Pennsylvania, and Illinois—with less than 20% of national enrollments in higher education account for over half the total state scholarship effort.[105] With the development of new state programs and the growth of many of the more recently adopted programs, the concentration of student aid dollars in these states should be further diminished.

Although only a few states have special programs specifically designed to assist students attending independent institutions, state programs have generally been more flexible than federal programs in making allowances for the higher tuition of independent institutions. In 1976-77, it is expected that about 38% of the awards and 54% of the aid dollars distributed through state programs will go to students at independent institutions. The average award for students at state institutions is expected to be about $440 compared with $833 for students at independent institutions. One might, therefore, view many state programs as having the effect of tuition equalization grants. However, since the average difference between state and independent tuitions is about $2,000, the additional $400 going to independent sector students bridges only about 20% of the typical tuition gap.[106]

Proposed Programs to Facilitate Student Choice

The growing interest in assuring students a reasonable choice of institutions has led to a variety of proposals aimed at that objective. After reviewing federal programs in higher education, the Carnegie Council on Policy Studies in Higher Education recommended certain changes and full funding for the Basic Educational Opportunity Grant program, continuation of several other programs, and a substantial increase in the funding of the State Student Incentive Grant Program. Most importantly, however, the Carnegie Council proposed a tuition equalization grant program in the average amount of $750 a year or one-half the educational subsidy of $1,500 which the Council estimated students attending a state institution receive.[107] One-half of the cost of the proposed program should be met by federal funds and one-half by state funds. It was proposed that these grants be made available to all students attending independent institutions, irrespective of need. [108]

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[105] *Federal Student Assistance: A Review of Title IV of The Higher Education Act*, Consortium on Financing Higher Education, April, 1975, p. 32.

[106] For a detailed listing of state programs, see *The Chronicle of Higher Education*, October 11, 1976, pp. 7-8.

The Carnegie Council proposal contains the essence of what many in the independent sector advocate: a program targetted at all students attending independent institutions funded at a percentage of the state subsidy which students at state institutions receive. A program such as that recommended by the Carnegie Council would facilitate student choice and also, almost as a byproduct, achieve the national goal of maintaining a pluralistic system of higher education.

The 1975 report of the Task Force of the National Council of Independent Colleges and Universities, *A National Policy for Private Higher Education*, also called for a state-federal program to narrow the tuition gap. Specifically, the Task Force recommended a program of grants to students in amounts ranging from $400 to $1,200 or in a range of 25% to 75% of the alleged state subsidy for state institutions. The Task Force advocated awarding the grants without a needs test just as students at state institutions benefit from the state subsidy regardless of personal financial need.

States, on their own, could increase equality of choice through aid programs specifically designed to assist students attending independent institutions.[109] In states that do have such programs, the effect on expanding student choice is impressive. Research on the condition of the independent sector in Indiana, for instance, has shown that the Indiana State Scholarship Program substantially affects the decisions made by prospective college students:

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[107] As was shown in Chapter 1, the actual current state subsidy is over $2,000.

[108] *The Federal Role in Postsecondary Education*, op. cit., Chapter 3.

[109] For further discussion of state programs see W. H. McFarlane, A. E. D. Howard, and J. L. Chronister, *State Financial Measures Involving the Private Sector of Higher Education*, A Report to the National Council of Independent Colleges and Universities, Fall, 1974.

> Those respondents who indicated receiving monetary awards from the State Scholarship Commission were asked what course of action they would have taken had they not been granted an award. Of the 1,198 students responding to this item, 18.5 percent (222) indicated they they would have delayed college for at least one year or sought immediate employment without intending to start college at a future date. Over a quarter of the respondents (28 percent) said they would have attended a public college or university in Indiana either as residents or commuters if state aid had not been forthcoming; only 16.6 percent indicated they could somehow have found the means to attend the college in which they are currently enrolled without financial assistance.[110]

Development of similar programs in other states should have an equivalent effect in increasing the real choices available to students. Student choice would also be expanded if states removed restrictions requiring scholarships and grants to be used at an institution within the state granting the award. Currently only 8 jurisdictions—Connecticut, Delaware, District of Columbia, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and Vermont—grant "portable" awards.[111] Although the removal of such restrictions is a controversial topic within the independent sector, lack of portability clearly limits the choices of grant recipients and also works a hardship on institutions that have traditionally attracted their students on a regional or national basis. Portability would both benefit students and permit institutions to compete on a more equal basis.

Another means of facilitating student choice is to provide funds directly to independent institutions rather than to students. Such programs facilitate choice by making it possible for institutions to charge lower tuition rates than would otherwise be necessary. Several states currently have such programs. In New York assistance to independent institutions is based on the number of degrees awarded, $330 for each associate and $940 for each baccalaureate degree in 1976-77. In its most recent four-year plan for higher education, the New York State Board of Regents advocated two key principles for financing post-secondary education —basing tuition at state institutions on the cost of instruction and basing aid to independent institutions on the costs incurred at state institutions. They noted that tying aid to independent institutions to the costs at state institutions would insure that such aid would keep up with inflationary cost increases.[112] Maryland's aid program is based on full-time enrollment. For each full-time equivalent student enrolled, the state provides an independent institution with 15% of the state subsidy per student at four-year state colleges. Like the approach advocated by the New York regents, this formula has the advantage of targetting the state contribution to the costs at state institutions. A third variant is the Georgia model. In Georgia, a direct grant in the amount of approximately $500 is given to independent institutions for each Georgia student enrolled. These funds must be used to reduce the tuition charged each Georgia student by $500.

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[110] W. W. Jellema, *Student Characteristics and Finances* (Indianapolis: Study of Independent Higher Education in Indiana, February 1975), p. VI-10.

[111] "States Giving Record Sums to Student-Aid Programs," *op. cit.*, p. 6.

[112] *Higher Education and National Affairs*, August 20, 1976, p. 5.

There is no doubt that these state programs have played a vital role in the survival of many independent institutions. For many institutions, the state funds make the difference between operating in the black and operating in the red. During the year 1972-73, out of 88 institutions receiving aid from the State of New York, 27 would have experienced operating deficits without that aid. Even with the aid, 40 institutions reported deficits for the year.[113] The adoption of such programs by other states would assist students wishing to attend independent institutions and increase the vitality of the institutions themselves.

Other dramatic programs have been proposed, including private or public loan banks, tax credits for educational expenses, investment banks for parents to invest their money in order to save for higher education, and voucher systems in which every student would have a voucher valued at the average state subsidy per student to be used at the institution of the student's choice.

Legal Issues

Traditionally, one of the serious questions raised by public programs to aid independent institutions was whether it was constitutional to aid institutions affiliated with a religious organization. An extensive treatment of that question is found in Part Three of this volume and only a brief summary of a few major points is presented here.

The United States Supreme Court has long distinguished between elementary and secondary education, on the one hand, and higher education, on the other. The Court has held that religiously affiliated elementary and secondary schools have a predominantly religious mission which disqualifies them from receiving direct—or substantial indirect—aid from public sources. No such automatic assumption is made, however, about the mission of a church-affiliated higher education institution. In reviewing the constitutionality of aid to colleges and universities, the Court tends to look carefully at how the aid will be used and at the actual mission and operation of the institution.

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[113] *The State Aided Colleges: Financial Profiles—1969-1973* (Albany, New York: The University of the State of New York, The State Education Department, March, 1974), p. 13.

In the very important recent decision, *Roemer* v. *Board*, the Court upheld the Maryland aid program.[114] The program had been challenged as a violation of the First Amendment because some church-affiliated institutions received aid. In a five to four decision, the Court upheld the Maryland program and ruled that it did not violate the First Amendment Establishment Clause because the aid could neither be awarded to seminaries or other institutions that awarded only theological degrees nor be used for sectarian purposes. The Court concluded that the recipient colleges were not so pervasively sectarian as to make them ineligible for aid.

The Roemer decision demonstrates that institutional aid programs can be designed to pass constitutional challenge. Other state programs are now before the courts including challenges to state aid for students who attend religiously affiliated colleges. Highly restrictive clauses in the constitutions of some states may render some programs unconstitutional in those particular states. As a general proposition, however, it is clear that the federal and most state governments can, if they wish, develop programs that will aid church-related institutions without violating the First Amendment.

Summary

Truly equal educational opportunity must include reasonable choice in the selection of an institution. For most students, the tuition gap between state and independent institutions poses a formidable barrier to the selection of an independent college. Students are able to surmount that barrier through the assistance of student aid. Although most independent institutions offer scholarships, the state and federal governments are the source of most student aid funds. However, those aid programs, particularly federal programs, do not take the tuition gap adequately into account. Therefore, they inevitably, if unintentionally, discriminate against students wishing to attend independent institutions. A far fairer system, and one that would guarantee the full utilization of existing educational resources, would be a program of student aid that took the tuition gap sufficiently into account and/or direct institutional aid pegged at a percentage of the state subsidy to students at state institutions. Since constitutionally permissible aid programs can be designed, the question for the future is not whether such aid is possible, but whether the independent sector will mobilize, both in Washington and the state capitals, to promote the development of aid programs that will facilitate student choice, and, in so doing, help to preserve for society the services of independent colleges and universities.

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[114] *Roemer v. Board of Public Works of Maryland*, 14 L. Ed. 2d 179 (1976).

4. Recommendations for Public Policy

The National Commission on United Methodist Higher Education believes that public policy makers at all levels of government must acknowledge and help to resolve the substantive public policy issues identified in this volume. The National Commission has identified three basic public policy principles and six related recommendations which set forth objectives for public policies and programs. Recognizing that there are various means that can be used to achieve those objectives, the National Commission believes the selection of particular programs must be left to the political processes and specific conditions at state and federal levels. Acceptance of these principles and implementation of these recommendations, however, will insure the successful resolution of public policy questions related to independent higher education.

PRINCIPLE 1: Independent institutions of higher education perform an essential public service function. State and federal public policies should recognize that service and seek to preserve its benefits for society.

This is an overarching principle that is central to all discussions of public policy for independent higher education. Independent colleges and universities perform an important public service function both by providing educational services and by strengthening the pluralistic structure of American society. Both society and students benefit greatly from these two contributions of independent higher education. Therefore, it is the responsibility of public policy makers to help preserve those contributions

PRINCIPLE 2: Government policies at both the federal and state levels should preserve diversity in higher education by assuring the autonomy and viability of individual institutions.

Independent institutions provide services not possible in state institutions because they are free to serve special needs and particular constituencies. The very existence of an alternative to state sponsored higher education helps to preserve academic freedom while providing healthy competition for state institutions. Yet the special contributions of independent colleges and universities depend in large measure on their ability to operate as autonomous institutions, subject to a minimum of government control. That autonomy has come more and more under attack in recent years as the multiplication of government regulations and requirements has subjected institutional decisions to constant scrutiny and review. It is understandable that some degree of regulation and provision for accountability should accompany programs of support to higher education. Nonetheless, there is a danger that federal and state regulation may go so far as to deprive those institutions of the freedom and flexibility needed to perform their missions properly. The very costs of complying with government regulations and programs are threatening the survival of some independent institutions.

At the state level, regulation may come to be exercised largely through agencies of statewide coordination of higher education. Whatever particular forms coordination may take in the several states, it is vital that the contributions and potential of independent colleges be taken into account. Specific consequences of statewide coordination are difficult to predict. Some believe that independent institutions will not be greatly affected one way or another. Others fear that state coordination will inevitably lead to increasing state control over independent institutions that receive public funds. Because of their financial distress, some independent institutions may be vulnerable to a process in which they would accept increasing state control and regulation in return for funds. Such control and regulation would reduce institutional autonomy and flexibility and thus undermine the diversity which is one of the major contributions of the independent sector. This danger is reduced, however, when funds are provided through student aid programs designed to increase student choice. In such programs, the need for regulation is minimal and accountability effectively occurs as students choose institutions that best meet their needs.

Another area of government policy that has serious implications for higher education is tax policy and, specifically, the preservation of tax incentives for charitable contributions to colleges and universities. The benefit to charitable organizations resulting from tax deductions is greater than is the loss in potential tax revenue to the government, and colleges and universities are particularly dependent on donors whose decisions are influenced by tax incentives. If the charitable deduction were totally eliminated, gifts to educational institutions and hospitals would drop by nearly one-half. Elimination of the current treatment of gifts of appreciated property would particularly affect contributions to educational organizations. Public policy makers must recognize that polices that discourage charitable contributions by individuals would do grievous harm to independent colleges.

PRINCIPLE 3: America's youth deserve a choice among institutions within a diverse system of higher education. The subsidization of state institutions and the absence of offsetting student financial assistance programs effectively prevent many students from considering independent institutions. Public policies that create real or apparent economic barriers to attendance at independent institutions should be changed in order to assure students access to institutions of their choice.

The federal and state governments must decide whether policies designed to promote access to higher education will be adequately supplemented by programs designed to facilitate student choice. The tuition gap between state and independent institutions has forced students who might have desired to attend independent institutions to attend state institutions instead. The result has been both a narrowing of the range of choice for students and serious financial problems for many independent institutions. New and expanded programs of student aid would cost taxpayers less than accommodation of current independent sector students at state colleges and universities. Programs to facilitate choice would increase true equality of educational opportunity and also maintain a diverse system of higher education.

Recommendations

Within the policy framework of these three principles, the National Commission on United Methodist Higher Education sets forth six recommendations.

1. The federal and state governments should create or expand programs of student financial assistance aimed at facilitating student choice among diverse types of institutions.
2. Federal Social Security and veterans' benefit programs should be restructured to lessen the present discrimination against students attending independent institutions.
3. Federal and state tax policies providing incentives for voluntary support of charitable and educational institutions should be continued.

4. State and local governments should maintain the tax exempt status of property belonging to educational institutions if used for educational purposes.

5. The process of coordination of state systems of higher education should adequately take the independent sector into account and avoid duplication of the unique program offerings of independent institutions. Where master plans provide for specific state or regional programs in independent institutions, provision should be made for reimbursing those institutions for the cost of instruction.

6. Federal and state agencies should revise regulations and reporting requirements that result in excessive administrative burdens and costs for both state and independent sector higher education institutions. Further, they should abolish or amend regulations that adversely affect institutional autonomy. Specific violations of law should be addressed through specific actions aimed at the violators rather than through all-encompassing regulations.

It is the National Commission's belief that these policy recommendations, if implemented by appropriate state and federal agencies, will preserve the diversity and autonomy of institutions independent of the state and adequate choice among educational opportunities for our nation's students.

The First Amendment Question

Consideration of public policy and independent higher education necessarily requires understanding of the constitutional issues involved. Policy issues relate to what is or might be desirable, but legal issues constrain what is possible. The analysis of First Amendment and other legal issues presented here provides an understanding of the legal context in which policy issues must be debated. It should be emphasized that although the National Commission has received and utilized this analysis, it is the staff and not the Commission membership which bears responsibility for its content, as it has not been adopted or otherwise approved by the National Commission.

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PART THREE

TABLE 10. *INDEX TO CASES CITED IN THE TEXT: CONSTITUTIONALITY OF PUBLIC PROGRAMS*

Reference Name	Full Name	Program Challenged	Result
Allen	Board of Education v. Allen, 392 U.S. 236 (1968)	Loan of Secular Textbooks—Elementary and Secondary Education—(New York)	Constitutional—U.S. Supreme Court
Durham	Durham v. McLeod, 192 S.E.2d 202 (1972)	Guaranteed Student Loans—Higher Education—(South Carolina)	Constitutional—State Supreme Court
Everson	Everson v. Board of Education, 330 U.S. 1 (1947)	Bus transportation—Elementary and Secondary Education—(New Jersey)	Constitutional—U.S. Supreme Court
Horace Mann	Horace Mann League v. Board of Public Works, 220 A.2d 51 (1966)	Educational Facilities Authority—Higher Education—(Maryland)	Unconstitutional as to certain church-related institutions—Maryland Court
Hunt	Hunt v. McNair, 413 U.S. 734 (1973)	Educational Facilities Authority—Higher Education—(South Carolina)	Constitutional—U.S. Supreme Court
Lemon	Lemon v. Kurtzman, 403 U.S. 602 (1971)	Teacher Salary Supplements (Rhode Island) and Reimbursement of teachers' salaries for secular courses (Pennsylvania)—Elementary and Secondary Education	Unconstitutional—U.S. Supreme Court
Nyquist	Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973)	Grants for maintenance and repair of buildings, tuition grants to low income parents and tax credits—Elementary and Secondary Education—(New York)	Unconstitutional—U.S. Supreme Court
Roemer	Roemer v. Board of Public Works, 49 L.Ed.2d 179 (1976)	Institutional Aid Program—Higher Education—(Maryland)	Constitutional—U.S. Supreme Court
Schempp	Abington School District v. Schempp, 374 U.S. 203 (1963)	Required Bible Reading—Elementary and Secondary Education—(Pennsylvania)	Unconstitutional—U.S. Supreme Court
Tilton	Tilton v. Richardson, 403 U.S. 672 (1971)	Construction Grants—Higher Education—(Federal Higher Education Facilities Act of 1963)	Constitutional—U.S. Supreme Court
Walz	Walz v. Tax Commission, 397 U.S. 664 (1970)	Tax exemption of property used for religious purposes—(New York)	Constitutional—U.S. Supreme Court

5. Constitutionality of Public Programs

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."*

These simple sixteen words of the First Amendment adopted in 1791 are the keystones around which issues of church-state relations are resolved. The twin clauses regarding establishment and free exercise are applicable to the states and to the federal government. Challenges to state or federal programs providing aid to church-related elementary, secondary, and higher education institutions have focused on the Establishment Clause first applied to these programs by the Supreme Court in 1947. In essence, this clause prohibits federal or state financial support or sponsorship of religion or active involvement in religious activity.[1] Such a simple statement of the meaning of the Establishment Clause, however, belies the complexity of interpretation and analysis required to determine whether any given program violates the Establishment Clause proscriptions.

Church-related colleges have been challenged as to their eligibility for public funds, and several Methodist-related institutions have been specifically named as defendants in law suits. Since 1970, challenges to programs providing aid to church-related colleges or their students have been mounted in, for example, Maryland, Nebraska, Virginia, Kansas, Minnesota, California, South Carolina, Washington, Tennessee, North Carolina, Arkansas and Louisiana.[2]

Under our federal system, any program must meet constitutional limitations in federal and state constitutions. Some state constitutions contain provisions more restrictive than the First Amendment of the U.S. Constitution.[3] This analysis will deal with issues raised by the First Amendment as applied to public funding programs providing aid to church-related colleges and universities or to students to attend these institutions.

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[1] Walz v. Tax Commission, 397 U.S. 664, 668 (1970).

[2] See Table 11 at end of Part III for an analysis of challenges to programs providing aid to students and to church-related institutions of higher education based on the Establishment Clause and state constitutional provisions.

Three Theories

How can the First Amendment twin clauses be interpreted and reconciled so that judges and legislators can assess the types of programs that are or are not constitutional? Based on historical analysis, public policy and philosophical views, three theories of first amendment interpretation have been advanced.[4]

Strict Separation

The first theory, built upon the views of Madison and Jefferson, is summed up in the Jeffersonian metaphor of a "wall of separation between Church and State." On the Supreme Court, Justices Brennan and Marshall have often articulated the separationist position. The newest member of the Court, Justice Stevens, also may endorse the separationist theory. The First Amendment is designed to preclude religious strife generated by political conflicts over how public funds should be allocated; the most effective way to protect the free exercise of religion is to affirm a strict separation between church and state. Justice Brennan has argued further that governmental involvement with religious institutions contributes to the weakening of religion or to the "secularization of the creed."

Cooperation

In contrast to strict separationists, the proponents of cooperation assert that the Establishment Clause, interpreted narrowly, should preclude only the establishment of a state church and that the free exercise clause mandates government support for religious pre-college educational institutions if parents are to avail themselves of their free exercise rights. Proponents of this theory raise the spectre of a religion of secularism since state supported institutions are precluded from asserting positions based on a religious perspective. Such enforced secularism is itself an establishment of religion, it is argued. Accommodationists among current Supreme Court members include Justices White, Burger, and Rehnquist, who tend to vote in favor of programs that benefit students or all educational institutions equally regardless of whether the institutions are sectarian or under the control of the state.

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[3] For a discussion of state constitutional provisions and litigation, see MCFARLANE, HOWARD, AND CHRONISTER, STATE FINANCIAL MEASURES INVOLVING THE PRIVATE SECTOR OF HIGHER EDUCATION (1974); and OLLIVER, J., THE LEGAL STATUS OF STATE AID FOR NONPUBLIC COLLEGES AND UNIVERSITIES IN THE UNITED STATES, 2 vols., unpublished dissertation, Florida State University (1975).

[4] For a detailed discussion of these three theories see Mott and Edelstein, *Church, State, and Education—The Supreme Court and Its Critics*, 2 JOURNAL OF LAW AND EDUCATION 535, 555-591 (1973).

Neutrality

The Supreme Court has endorsed, however, a third theory, one of neutrality. Justice Blackmun recently articulated this theory: "Neutrality is what is required. The State must confine itself to secular objectives, and neither advance nor impede religious activity." But, he noted, "of course, that principle is more easily stated than applied."[5]

Justice Blackmun sums up the rationale behind the neutrality theory as he acknowledges the pervasive influence of government:

> A system of government that makes itself felt as pervasively [illegible] ours could hardly be expected never to cross paths with the church. In fact, our State and Federal Governments impose certain burdens upon, and impart certain benefits to, virtually all our activities, and religious activity is not an exception. The Court has enforced a scrupulous neutrality by the State, as among religions, and also as between religious and other activities, but a hermetic separation of the two is an impossibility it has never required.[6]

Justices Stewart, Blackmun and Powell represent swing votes in Establishment Clause litigation.

Since it is the neutrality theory that has been embraced by the Supreme Court, other courts must grapple with that theory as Establishment Clause challenges are mounted to specific programs aiding church-related elementary, secondary, and higher educational institutions.

Uncharted Waters

Initially, the courts had difficulty in developing a clear constitutional framework for dealing with programs of aid to church-related institutions of higher education. For more than 20 years the U.S. Supreme Court has looked at the question of public funding on a case-by-case basis. However, formulation of general principles with universal application has proven to be an elusive goal: "Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law," Chief Justice Burger has admitted.[7]

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[5] Roemer v. Board of Public Works of Maryland, 49 L.Ed.2d 179, 188 (1976).

[6] *Id.* at 187.

The Court is, at times, confronted by the need to balance the constitutional demands of the Establishment Clause with the demands of the Free Exercise Clause. Thus, according to Justice Burger, the Court:

> Will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.[8]

Public programs may result in unintended consequences for church-related institutions. Is, for example, a state program that offers scholarship assistance only to students at state and non-church-related institutions discriminatory in its effect? What kind of public policy would be "productive of a benevolent neutrality?"

Historical analysis is often cited as a source of clarity; however an examination of the history of the drafting and adoption of the First Amendment is not conclusive. Justice Brennan, in his concurring opinion in the *Schempp* decision, in which school-sponsored recitation of the Lord's Prayer was ruled unconstitutional, suggested that historical analysis does not necessarily resolve specific issues:

> A too literal quest for the advice of the Founding Fathers upon the issues of these cases seems to me futile and misdirected for several reasons: First, on our precise problem the historical record is at best ambiguous, and statements can readily be found to support either side of the proposition.[9]

Jefferson could not have anticipated the pervasiveness of government regulation and funding in areas tangential to education when he envisioned a wall of separation between church and state. Thus, according to Justice Burger:

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[7] Lemon v. Kurtzman, 403 U.S. 602, 612 (1971).

[8] 397 U.S. at 669.

[9] Abington School District v. Schempp, 374 U.S. 203, 237 (1963) (Brennan, J., concurring). For a discussion of the utility of historical analysis, see MORGAN, THE SUPREME COURT AND RELIGION, 184-186 (1972).

> Some relationship between government and religious organizations is inevitable. . . . Judicial caveats against entanglement must recognize that a line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.[10]

One factor in determining the outcome of litigation involves the mission or purpose of educational institutions. The Supreme Court has held that the central objective of Roman Catholic church-related elementary and secondary schools is "predominantly religious," and, consequently, that no further analysis of the particular institutions needs to be undertaken in aid programs specifically targetted at pre-college parochial schools. As a result, educational content or mission of a particular primary or secondary school is rarely at issue in litigation.

The situation with regard to higher education is quite different; the Court does look at educational mission. Therefore, it is essential that statements of institutional mission be clear and consistent with the actual goals of the institution. Sometimes rhetoric exceeds reality with respect to church relatedness. Yet, such language may propel an institution into litigation challenging its eligibility for public funds.

The question of public funding has, no doubt, forced a re-examination by some colleges of purpose and mission. Criteria are being developed by state and federal courts and administrative agencies that must be met by institutions receiving public funds. Institutions may decide to meet such criteria or elect to reject public funding if such criteria are inconsistent with their individual missions.

The Litigation Framework

The lack of clarity regarding the scope of the Establishment Clause caused public policy makers to disagree on the constitutionality of various programs. Prior to 1958, federal involvement in higher education was not substantial. Federal land grant legislation had spurred the development of state institutions. The G.I. Bill had provided assistance to veterans to attend both state and independent institutions, and funds were appropriated for research in the national interest.

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[10] 403 U.S. at 614. See also the efforts of a Congressional Committee to understand the implications of *Tilton* in *Hearings on H.R. 32, H.R. 5191, H.R. 5192, H.R. 5193, H.R. 7248 Before The Special Subcommittee on Education of the House Committee on Education and Labor*, 92nd Cong., 1st Sess., 950-987 (1971).

In the post-Sputnik era, Congress groped to define a national goal of providing student access and equal opportunity. Contemplating federal programs for student and institutional aid, Senator Wayne Morse asked the Secretary of Health, Education and Welfare to draft a memo outlining issues involved in the constitutionality of various forms of aid to church-related institutions. Secretary Ribicoff's memorandum of 1961 dealt mostly with the constitutional issues as applied to elementary and secondary schools; however, it also laid out a constitutional framework for higher education which was later to be used by the Supreme Court. Of great constitutional import was the section in which the Secretary differentiated between pre-college education and higher education for First Amendment purposes.

The constitutional principles applied to pre-college and higher education are the same, argued HEW, but the factual circumstances surrounding the application of the principles are different. The differences are attributable to history and tradition. The independent sector has educated the majority of higher education students until recently, whereas, in elementary and secondary education, the state sector has long been predominant. Elementary education has been compulsory since the early stages of its development, whereas attendance in higher education has been voluntary and does not involve a choice between "alternative commands of the State." A college student "can better understand the significance of sectarian as compared to secular teaching." And if a college student chooses a religiously affiliated institution, "he is merely asserting his constitutional right to the 'free exercise thereof.' "[11]

The memorandum shifts from constitutional arguments—"religious indoctrination is less pervasive in a sectarian college curriculum"—to public policy arguments—"free public education is not available to all qualified college students."[12] The state sector, it argued, could not build the facilities necessary to educate the growing college enrollments nor could it provide the specialized skills imparted by a relatively few institutions. He warned against the "disastrous national consequences in terms of improving educational standards which could result from exclusion of, or discrimination against, certain private institutions on grounds of religious connection.'[13] For all of these reasons, "aid to higher education is less likely to encounter constitutional difficulty than aid to primary and secondary schools."[14]

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[11] Constitutionality of Federal Aid to Education in its Various Aspects, S. Doc. No. 29, 87th Cong., 1st Sess. (1961) (prepared by Department of Health, Education and Welfare) reprinted as *Memorandum on the Impact of the First Amendment to the Constitution Upon Federal Aid to Education*, 50 GEORGETOWN L. J. 349, 378 (1961). See the record of the debate in Congress between Senators Morse and Ervin on whether any form of aid to church-related institutions is constitutionally permissible, 109 Congressional Record H.19467-19481 (1963).

[12] *Id.* at 380.

A second distinction developed in the memorandum was that between grants to students and grants to institutions. Grants to students would raise fewer constitutional difficulties because the student is able to make a choice, free of government compulsion, about the type of institution selected. Aid given directly to the student, such as scholarship and loan money, or cost of education grants would be constitutional. However, the memorandum suggested that grants given directly to institutions, for purposes such as construction, would raise serious constitutional problems.

The Supreme Court Applies the Test: Tilton, Hunt and Roemer

In the early 1970s the U.S. Supreme Court took a fresh look at the whole issue. Decisions handed down in 1971, 1973, and in 1976 on the constitutionality of construction aid, educational facilities authorities and institutional aid for church-related colleges altered the landscape considerably.

Prior to 1970, a two-part test had been applied in cases relating to the Establishment Clause. First, does the legislation reflect a secular legislative purpose and, second, does the legislation have a primary effect that neither advances nor inhibits religion? Aid for textbooks and school buses had met those tests and had been approved. A third factor, regarding entanglement, was added to the test when the Court sustained, in the 1970 *Walz* decision, property tax exemption for religious institutions and ruled that disallowance of tax exemptions would result in government entanglement with religion far greater than if the exemptions were allowed.[15] The three-part test has become the accepted approach, having been reaffirmed as recently as 1975 as follows: (1) Does the statute have a secular legislative purpose; (2) does the statute have a primary effect that neither advances nor inhibits religion; and (3) does

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[13] *Id.*

[14] *Id.* at 379.

[15] 397 U.S. 664 (1970).

the statute and its administration avoid excessive government entanglement with religion?[16]

The three-part test was applied in two decisions handed down on the same day, June 28, 1971. In *Lemon v. Kurtzman*, the Court struck down Pennsylvania and Rhode Island programs which, among other things, reimbursed nonpublic elementary and secondary schools for salaries for the teaching of secular subjects. Although the programs clearly reflected a secular legislative purpose, they resulted in impermissible entanglement. The Court found it unnecessary to consider the second part of the test.

Construction Grants

On the same day, in the first application of the test to higher education, the Court in *Tilton v. Richardson*[17] sustained the U.S. Higher Education Facilities Act of 1963 providing construction grants for facilities used exclusively for secular educational purposes. Four Catholic colleges in Connecticut had received federal grants for construction of a fine arts building, library, science building, and language laboratory. In *Tilton*, the Court applied the test relating to secular legislative purpose, primary effect, and entanglement. Speaking for the plurality, Chief Justice Burger acknowledged, "Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics."[18] Nevertheless, the Court had little difficulty in concluding that there was a legitimate secular legislative purpose in the federal act.

Regarding the second or primary effect part of the test, the critical question was "not whether some benefit accrues to a religious institution as a consequence of the legislative program, but whether its principal or primary effect advances religion."[19] If the secular functions of the institutions could be separated from their sectarian functions, then aid to the secular functions would be permissible. The plaintiffs argued that religion so permeated the institutions that separation was not possible. Drawing a "composite profile," the plaintiffs argued that the typical sectarian institution "imposes religious restrictions on admissions, requires attendance at religious activities, compels obedience to the doctrines and dogmas of the faith, requires instruction in theology and doctrine, and does everything it can to propagate a particular religion." [20]

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[16] Meek v. Pittenger, 421 U.S. 349, 358 (1975).

[17] Tilton v. Richardson, 403 U.S. 672 (1971). See WILSON, TILTON v. RICHARDSON: THE SEARCH FOR SECTARIANISM IN EDUCATION (1971).

[18] 403 U.S. at 678.

[19] *Id.* at 679.

Justice Burger concluded, however, that the institutions were characterized by academic freedom rather than by religious indoctrination and the secular functions were thus eligible for aid. He left open, however, the possibility that certain colleges might not qualify: "Individual projects can be properly evaluated if and when challenges arise with respect to particular recipients and some evidence is then presented to show that the institution does in fact possess these characteristics." [21]

The statute provided that the federal government could recover its funds during a 20-year period if the restriction against religious use was violated. Finding this provision deficient, the Court held that the buildings should never be used for religious purposes and, therefore, the 20-year recovery limitation was excised from the statute.

In analyzing the entanglement part of the test, the Court identified four areas for analysis: (1) the character and purposes of the recipient colleges; (2) the nature of the aid provided; (3) the resulting relationships between the government and the church-related institutions; and (4) the potential for political divisiveness resulting from the aid. The crucial variable in the analysis was, however, the character of the institutions.

Justice Burger found that the institutions of higher education in *Tilton* were substantially different from the pre-college institutions in *Lemon*. The Court had held the Pennsylvania and Rhode Island programs unconstitutional because the "inculcation of religious values was a substantial if not the dominant purpose of the institutions." [22] But this was not the case, he argued, with respect to the institutions of higher education in *Tilton*. He found that "there are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools." [23]

> The 'affirmative if not dominant policy' of the instruction in precollege church schools is 'to assure future adherents to a particular faith by having control of their total education at an early age.' There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination. Common observation would seem to support that view, and Congress may well have entertained it. The skepticism of the college student is not an inconsiderable barrier to any attempt or tendency to subvert the congres-

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[20] *Id.* at 682.
[21] *Id.*
[22] *Id.* at 685.
[23] *Id.*

> sional objectives and limitations. Furthermore, by their very nature, college and postgraduate courses tend to limit the opportunities for sectarian influence by virtue of their own internal disciplines. Many church-related colleges and universities are characterized by a high degree of academic freedom and seek to evoke free and critical responses from their students.[24]

Moreover, because of these differences in the nature of the students and the institutional commitment to academic freedom, "the necessity for intensive government surveillance is diminished and the resulting entanglements between government and religion lessened." [25]

Turning then to a consideration of the nature of the aid, Justice Burger argued that the non-ideological character of the aid for construction lessens entanglement between government and religious institutions. "Our cases from *Everson* to *Allen* have permitted church-related schools to receive government aid in the form of secular, neutral, or non-ideological services, facilities, or materials that are supplied to all students regardless of the affiliation of the school that they attend." [26] Thus the plurality found that buildings used for a secular purpose were religiously neutral.

In considering the resulting relationships between the government and church-related institutions, Justice Burger argued that the aid involved "a one-time single purpose construction grant." In contrast to annual grants, the financial relationship and inspection requirements were minimal. He conveniently ignored the need for continuous monitoring of the use of these facilities—a strange omission in light of the Court's earlier determination that even a 20-year restriction was inadequate to meet the primary effect test.

Finally, turning to the fourth factor, the potential for political divisiveness, Justice Burger again distinguished between higher education and elementary and secondary education. There was less likelihood of political conflict surrounding programs for higher education:

> Possibly this can be explained by the character and diversity of the recipient colleges and universities and the absence of any intimate continuing relationship or dependency between government and religiously affiliated institutions. The potential for divisiveness inherent in the essentially local problems of primary and secondary schools is significantly less with respect to a college or university whose student constituency is not local but diverse and widely dispersed.[27]

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[24] *Id.* at 685-6.
[25] *Id.* at 687.
[26] *Id.*
[27] *Id.* at 688-9.

No one of these entanglement factors was controlling, warned the Chief Justice, but "cumulatively" they pointed to areas of permissible, nonentangling government aid.

A college eligible for aid—the *Tilton* model college—is thus characterized by:

1. The absence of religious discrimination in the selection of students and faculty.
2. The absence of required attendance at religious services.
3. The absence of required courses in religion or theology that tend to indoctrinate or proselytize.
4. A strong commitment to principles of academic freedom.

Justice White cast the crucial vote in sustaining the program; however, he did not accept the plurality's distinction between pre-college and higher education articulated in *Tilton*. Moreover, certain institutions, he suggested in a concurring opinion, would not pass constitutional challenge:

> As a postscript I should note that both the federal and state cases are decided on specified Establishment Clause considerations, without reaching the questions that would be presented if the evidence in any of these cases showed that any of the involved schools restricted entry on racial or religious grounds or required all students gaining admission to receive instruction in the tenets of a particular faith. For myself, if such proof were made, the legislation would to that extent be unconstitutional.[28]

In the final analysis, *Tilton* turned on the Court's finding that there is no excessive entanglement between government and the religious institutions because of the nonsectarian character of the institutions themselves.

Construction Bonding Authorities

Two years after *Tilton*, the Court again applied the three-part test in *Hunt* v. *McNair* when it considered legislation establishing an educational facilities authority in South Carolina.[29] The authority, funded entirely by the user institutions, was empowered to issue revenue bonds for construction of educational facilities. Since the bonds were issued by a state authority, they could be issued with a lower interest rate than could be obtained on the commercial market; interest from the bonds was not subject to South Carolina state or federal taxes. A secular use restriction provided that none of the facilities could be used for religious purposes, sectarian instruction, or by a school or department of divinity. However, if a college was forced to sell the facility through a judicial sale, then the college could convey the property free and clear of all encumbrances. Since the facilities were owned initially by the authority and leased to the colleges, the authority had administrative oversight to assure that revenues from the buildings would cover the bonds and that the buildings were not used for sectarian purposes.

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[28] 403 U.S. at 671 n. 2.

[29] Hunt v. McNair, 413 U.S. 734 (1973).

In weighing the challenge to Baptist College in Charleston, South Carolina, the Court employed the three-part test—although Justice Powell noted the parts were "no more than helpful signposts." [30] Clearly, the act fulfilled a secular legislative purpose, said Justice Powell:

> Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience.[31]

In clarifying the primary effect standard, Justice Powell addressed one of the major arguments offered by opponents of aid: "The Court has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends." [32] The primary effect test has two parts:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting.[33]

Both requirements were satisfied. Baptist College was not pervasively sectarian even though the Baptist Convention elected the board of trustees, approved certain financial transactions, and had sole authority to amend the college charter. The secular use restriction satisfied the second requirement.

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[30] *Id.* at 741.
[31] *Id.* at 742 n. 5 *citing* Board of Education v. Allen, 392 U.S. 236, 247 (1968).
[32] *Id.* at 743.
[33] *Id.*

Regarding entanglement, Justice Powell reasoned that entanglement was dependent on the character of the institution: "the degree of entanglement arising from inspection of facilities as to use varies in large measure with the extent to which religion permeates the institution." [34] Since the institution was similar to the colleges in *Tilton* and the South Carolina program provided aid similar to that in *Tilton*, there was no need for an extensive discussion as to character of the institution or nature of the aid.

But the question of administrative relationships was more troublesome. The monitoring authority was empowered to alter the charges and to establish rules for the use of the buildings. These broad powers pointed to a "closer issue." [35] Justice Powell headed off objections by denying that these powers would be used: "These powers are sweeping ones, and were there a realistic likelihood that they would be exercised in their full detail, the entanglement problems with the proposed transaction would not be insignificant." [36] Justice Powell warned that should a college fail to make the necessary payment and should the authority actually establish fees or charges, such action might be inconsistent "with the Establishment Clause, but we do not now have that situation before us." [37]

Justice Brennan's dissent, joined by Justices Douglas and Marshall, was powerful. The powers of the authority to intervene in the affairs of the institution were far greater than those in *Tilton*—a decision with which Justice Brennan was still in disagreement. "In short, the South Carolina statutory scheme as applied to this sectarian institution presents the very sort of 'intimate continuing relationship or dependency between government and religiously affiliated institutions' that in the plurality's view was lacking in *Tilton*." [38]

Institutional Aid

Of even greater significance for higher education was the 1976 Supreme Court decision in *Roemer* v. *Maryland*.[39] The state of Maryland had for some time provided aid to independent institutions. Originally the state allocated funds to independent institutions on the basis of the number of associate and bachelor's degrees awarded. The program was later amended to include funding for graduate degrees. But following *Tilton*, the Maryland legislature enacted a restriction precluding the use of funds for sectarian purposes. In 1974, the program was changed to provide direct, noncategorical grants to institutions. Grants were awarded based on the number of full-time students at each independent institution times 15% of the amount appropriated for each full-time equivalent student at four-year state colleges.

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[34] *Id.* at 746.
[35] *Id.* at 747.
[36] *Id.*
[37] *Id.* at 749.
[38] *Id.* at 754.
[39] Roemer v. Board of Public Works, 49 L.Ed.2d 179 (1976).

The Maryland program was challenged by taxpayers represented by Americans United for Separation of Church and State as a violation of the Establishment Clause. Of the five colleges originally challenged—out of 18 independent colleges eligible—four were affiliated with the Catholic Church and one with The United Methodist Church. The program was sustained by a three-judge federal district court in a 2 to 1 decision.[40]

In essence, the District Court held that the colleges conformed closely to the colleges approved in *Tilton*, and in fact were less sectarian than the Baptist institution in *Hunt*. Even though the government could monitor the use of the funds including audits and inspections, the state would not become excessively entangled with religion since the institutions themselves were not pervasively sectarian. Moreover, the District Court ruled that the resulting relationship between the institutions and the state was less intensive than the Supreme Court had permitted in *Hunt*.

Judge Bryan dissented because the funds could be used potentially to support religious exercises and sectarian courses. Only the good faith of the institutions precluded the funds from being used for unconstitutional purposes. To prevent such use would require "exceptional safeguards against overflow of religion and theology into the purely academic curricula" and would result in excessive governmental entanglement.[41]

The issue was joined, on appeal to the Supreme Court, by PEARL (The National Coalition for Public Education and Religious Liberty). In an

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[40] Roemer v. Board of Public Works, 387 F. Supp. 1282 (D. Md. 1974). One of the defendant colleges, St. Joseph's College, had closed prior to the litigation; however, since it had received state funds, it was named as a defendant in the litigation. Another defendant, Western Maryland College, was dismissed from the suit following the District Court decision. For a discussion of the issues related to the dismissal, see the discussion in this chapter, Western Maryland College—One Response to Litigation.

[41] *Id.* at 1300.

amicus curiae brief, Leo Pfeffer, architect of numerous challenges to church-related institutions, argued that the distinguishing factor in *Hunt* and *Tilton* was that the funds were used for building construction. Public funds for construction represented the *only type of direct aid* that would be constitutional. Other forms of aid to elementary and secondary schools already had been held unconstitutional. The monitoring of all-purpose grants to institutions with both secular and sectarian purposes would require a substantial amount of government surveillance and run afoul of the entanglement test. The position of the *amici* was simply that construction programs for higher education sustained by the Supreme Court represented the *outer limits* of permissible aid.[42]

The long-awaited *Roemer* decision, the third in the trilogy relating to church-related colleges and universities, was handed down in June, 1976. The Maryland program was sustained by a divided court (5-4) and five different opinions were rendered. Justice Blackmun spoke only for a plurality.

Justice Blackmun implied that the Court was weary of the challenges: "We are asked once again to police the constitutional boundary between church and state. Maryland, this time, is the alleged trespasser." [43] No new ground would be broken in this case, because "the slate we write on is anything but clean. Instead, there is little room for further refinement of the principles governing public aid to church-affiliated private schools." The purpose of the Court was to insure that those principles were "faithfully applied in this case." [44] In the future, the lower courts would assume the primary responsibility. The Supreme Court would weigh heavily the evidentiary record developed by the trial court and would not "reappraise the evidence, unless it plainly fails to support the findings of the trier of facts." [45]

Justice Blackmun put to rest the notion that all aid that might benefit a religious institution violated constitutional proscription. Such "hermetic separation" was all but impossible; what was required was a "scrupulous neutrality." Nevertheless, Justice Blackmun warned that a state may not fund what is essentially a religious education. The dictum is directed to parochial pre-college institutions and possibly to certain pervasively sectarian colleges: "The State may not, for example, pay for what is actually a religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike." [46]

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[42] The Solicitor General submitted a brief for the United States as *amicus curiae* supporting the judgment of the federal district court and the position of the Maryland colleges; the federal government provides aid to institutions through a number of programs, the most significant of which is the Strengthening Developing Institutions Program.

[43] 49 L.Ed.2d at 183.

[44] *Id.* at 192.

[45] *Id.* at 194.

In essence, the Court reaffirmed what it had said before. First, it found institutions eligible for aid that had considerable religious indicia—formal affiliation with the Roman Catholic Church, church representatives on governing boards, voluntary religious services, Roman Catholic chaplains, mandatory religion and theology courses, employment of members of a religious order, enrollment of a majority of Roman Catholic students, and, in one instance, the opening of class with prayer (although the practice was not required by the institution). Despite these specific evidences of religious orientation, hiring was not done on the basis of religion, students were selected without regard to religion, and each of the institutions was characterized by an atmosphere of academic freedom. Hence all of the *Tilton* criteria were met. And, said Justice Blackmun, no single indicia of religious affiliation will make an institution ineligible for aid: "it is necessary to paint a general picture of the institution, composed of many elements." [47]

Secondly, the Court found that institutional aid could be designed so as to avoid entanglement problems. The argument was simple. If the institution was not pervasively sectarian there was little likelihood that the state would develop an entangling alliance with religion. At a non-pervasively sectarian institution, there was little danger "that an ostensibly secular activity—the study of biology, the learning of a foreign language, an athletic event—will actually be infused with religious content or significance." [48] The state, he argued, could "identify and subsidize separate secular functions carried out at the school, without on-the-site inspections being necessary to prevent diversion of the funds to sectarian purposes." [49] Thus, the audits would be "quick and non-judgmental," and the relationship between the monitoring agency and the colleges would not likely be "any more entangling than the inspections and audits incident to the normal process of the colleges' accreditations by the State."[50] Moreover, the potential for political divisiveness when considering the Maryland program was lessened because the aid was "extended to private colleges generally, more than two-thirds of which have no religious affiliation."[51]

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[46] *Id.* at 188.

[47] *Id.* at 194. Justice Blackmun avoided discussion of what specific uses of the state funds might violate the secular use restriction; he noted that both the Council and the colleges should give "a wide berth" to what is meant by a specifically religious activity and "thus minimize constitutional questions." Challenges to specific use of funds could be brought in the lower courts. *Id.* at 196.

[48] *Id.* at 197.

[49] *Id.* at 198. Justice Blackmun played down the form of aid distinction in *Tilton* relating to one-time construction grants that the Court emphasized was a part of the entanglement analysis. Even in *Tilton*, continuous government surveillance was required to assure that the buildings were not used for sectarian purposes.

Justice White's concurring opinion, joined by Justice Rehnquist, supported the judgment of the Court, but rejected the entanglement analysis. He argued, as he had done before, that there should be a two-part test: primary effect and secular purpose. The entanglement analysis posed a paradox; to assure that the primary effect of legislation was not to advance religion the state was compelled to enact procedural safeguards that inevitably embroiled the state in entanglement problems. Moreover, the entanglement analysis was redundant, since it, like the primary effect analysis, turned on the character of the institution.

In dissent, Justice Stewart voiced concern about the nature of the aid. The case, he argued, was distinguishable from *Tilton* in that aid was non-categorical in nature. He was troubled by the finding that the compulsory religion courses were not taught as part of an academic discipline, and quoted the dissenting District Court judge to the effect that the program "*in these instances* does in truth offend the Constitution by its provisions of funds, in that it exposes State money for use in advancing religion, no matter the vigilance to avoid it."[52]

Justice Brennan, joined by Justice Marshall, rejected again the concept that secular and religious functions could be separated. Since it was impossible to separate the two, the state was in effect aiding religion. Justice Brennan voiced his concern about public policy: state subsidies tended to promote an "inter-dependence" between religion and the state. "It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government."[53]

The dissent of the newest member of the Court, Justice Stevens, warned of the "pernicious tendency of a state subsidy to tempt religious schools to compromise their religious mission without wholly abandoning it." There was he argued, a "disease of entanglement" that flowed from legislation that encouraged religious activity as well as from legislation "discouraging wholesome religious activity."[54]

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[50] *Id.* at 198.
[51] *Id.* at 198-199.
[52] *Id.* at 204 from 387 F. Supp. 1298.
[53] *Id.* at 202 *citing* 374 U.S. 203, 259 (Brennan, J., concurring).

One issue not resolved in favor of the colleges by the District Court related to the use of public funds for required courses in theology and religion. Although each of the institutions was characterized by academic freedom and absence of religious indoctrination, the court noted that "a possibility existed that these courses could be devoted to deepening religious experiences in the particular faith rather than to teaching theology as an academic discipline."[55] The possibility existed because only a limited range of religion courses were taught at the institutions, and most of the religion teachers were members or clergymen from the sponsoring denomination. Accordingly, the District Court directed the Maryland board responsible for the program to take steps to insure that public funds were not used to support such courses.

The defendant colleges did not specifically appeal this finding to the Supreme Court although an *amicus* brief was filed on behalf of several college associations taking exception to the District Court's finding.[56] The associations argued that contrary to the court's conclusion, there was an adequate basis for government support for the academic study of religion because "the academic study of religion is widely regarded as an essential part of a liberal arts education."[57] The plaintiffs had not carried the burden of proof, argued the *amici*.

The *amici* urged the Supreme Court to find the District Court in error or to reserve judgment until some later time on the narrow question of funding for courses in religion. In a very brief footnote, Justice Blackmun refered to the *amici* challenge. Since the issue of funding courses in theology and religion had not been cross-appealed, the Court expressed no opinion on the issue and therefore the District Court decision prevailed.[58]

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[54] *Id.* at 204.

[55] 387 F. Supp. at 1288.

[56] Brief of the Association of American Colleges, the American Council on Education, the Association of Jesuit Colleges and Universities, the Council for the Advancement of Small Colleges, the National Association of Schools and Colleges of The United Methodist Church, the National Catholic Educational Association, and the National Council of Independent Colleges and Universities as *amici curiae* in Roemer v. Board of Public Works.

[57] *Id.* at 20.

The *Roemer* decision advances a number of propositions significant for the constitutional framework for aid for church-related institutions of higher education. First, non-categorical or institutional aid is in and of itself constitutional. Second, certain institutions are ineligible for aid because the sectarian and the secular functions cannot be separated. Third, Justice Blackmun's language hints that whether the aid goes to the student or the institution may not be as important as how the funds are used, i.e. for identified non-sectarian purposes. Fourth, for primary effect and entanglement analyses, the central point of controversy in this litigation relates to the character of the institution. Fifth, the Supreme Court will place heavy reliance on the trial court's assessment of the religious character of an institution. In the future it will be very difficult for a college adjudged ineligible for aid to alter that decision by appeal to the Supreme Court.

The Supreme Court has now firmly established that there are two models of institutions of education, a pervasively sectarian model from the elementary-secondary cases, and a model of a non-pervasively sectarian institution. Both models are referred to in footnotes in *Roemer*. If an institutional analysis is required for constitutional litigation purposes, eligible institutions will have to conform to Model II.

Model I, Pervasively Sectarian Institution

> The elements of the 'profile' were that the schools placed religious restrictions on admission and also faculty appointments; that they enforced obedience to religious dogma; that they required attendance at religious services and the study of particular religious doctrine; that they were an 'integral part' of the religious mission of the sponsoring church; that they had religious indoctrination as a 'substantial purpose'; and that they imposed religious restrictions on how and what the faculty could teach.[59]

Model II, Non-Pervasively Sectarian Institution

> All four schools are governed by Catholic religious organizations, and the faculties and student bodies at each are predominantly Catholic. Nevertheless,

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[58] 49 L.Ed.2d 193 at n. 20.

[59] *Id.* at 191 *citing* Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 767-768 (1973).

> the evidence shows that non-Catholics were admitted as students and given faculty appointments. Not one of these four institutions requires its students to attend religious services. Although all four schools require their students to take theology courses, the parties stipulated that these courses are taught according to the academic requirements of the subject matter and the teacher's concept of professional standards. The parties also stipulated that the courses covered a range of human religious experiences and are not limited to courses about the Roman Catholic religion. The schools introduced evidence that they made no attempt to indoctrinate students or to proselytize. Indeed, some of the required theology courses at Albertus Magnus and Sacred Heart are taught by rabbis. Finally, as we have noted, these four schools subscribe to a well-established set of principles of academic freedom, and nothing in this record shows that these principles are not in fact followed. In short, the evidence shows institutions with admittedly religious functions but whose predominant higher education mission is to provide their students with a secular education.[60]

Other Court Challenges: Resolved

Guided sometimes by the Supreme Court's analyses in *Tilton*, *Hunt*, and *Roemer*, courts across the land have grappled with specific challenges to legislation.

New Jersey: Educational Facilities Authority-1971

The New Jersey Supreme Court upheld a bonding authority similar to the South Carolina authority in *Hunt*. The decision was appealed to the U.S. Supreme Court which, after *Tilton*, remanded the case for further consideration. On remand, the New Jersey Supreme Court reaffirmed its decision by finding that no greater entanglement existed than in *Tilton*; however, it held the legislation would have to be changed so that any facility constructed would never be used for sectarian purpose.[61] Further, no college could participate in the program if it restricted admission on racial or religious grounds or if it required students to receive instruction in the tenets of a particular faith. This decision was not appealed to the U.S. Supreme Court.

California: Educational Facilities Authority-1974

The California Supreme Court upheld an educational facilities authority similar to the South Carolina authority in *Hunt*.[62] The challenged institution, the University of the Pacific, although formally affiliated with The United Methodist Church, claimed no affiliation with any religious organization. The court dodged potential entanglement problems that might arise if the authority were to exercise its administrative powers by saying that the supervisory powers were not likely to be exercised.

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[60] *Id.* at 195 *citing* Tilton v. Richardson, 403 U.S. at 686-687.

[61] Clayton v. Kervick, 285 A.2d 11 (1971).

[62] California Educational Facilities Authority v. Priest, 526 P.2d 513 (1974). See also Minnesota Higher Education Facilities Authority v. Hawk, 232 N.W.2d 106 (1975).

Washington: Tuition Grants-1973

The Washington Supreme Court held that a state program providing grants for students to attend independent institutions was unconstitutional under provisions of the Washington Constitution and the First Amendment.[63] The state constitution specifically proscribed the use of public funds for institutions under sectarian control or for religious worship, exercise or instruction.

The court looked at each of the ten colleges involved in the program with regard to: history, stated purposes, governance, faculty, student body, academic freedom, property ownership, financial assistance, use of campus, role of religion in the college, college affiliation, place of religion in the curriculum, and denominational control. The court found that various degrees of religious orientation characterized each of the institutions. While none of the institutions was deficient on every criterion, each of them was deficient in at least one element; and, thus, the program amounted to aid to institutions characterized by religious influence. The Washington Constitution, the court noted, was far stricter in its prohibitions than the First Amendment of the U.S. Constitution.

The court also reviewed briefly the challenge to the tuition program based on the Establishment Clause. This program was dissimilar to the program in *Tilton* in that the Washington statute provided money for continuing financial support which could lead to *excessive political entanglement* and therefore the program violated the constitutional proscriptions.

Nebraska: Tuition Grants-1974

The Supreme Court of Nebraska held a program of tuition grants for students to attend independent colleges and universities unconstitutional under the Establishment Clause and under a state constitutional provision precluding aid to religious institutions.[64] Two institutions had compulsory religion courses and two required daily devotions or attendance at campus religious services. At two of the institutions where there were no required religion courses, members of the particular denomination were predominant on the board. The statute provided a very limited restriction relating to students pursuing theological or divinity degrees. On the basis that the funds could be used to support sectarian as well as secular subjects, the court held the program violated the Establishment Clause.

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[63] Weiss v. Bruno, 509 P.2d 973 (1973).

[64] State ex rel. Rogers v. Swanson, 219 N.W.2d 726 (1974).

Two judges dissented from the holding. They argued that the court failed to make the institutional distinctions required by *Tilton* and rejected the premise of the majority that the absence of a broad secular use restriction caused the program to run afoul of the Establishment Clause. Significantly, the dissenters suggested that the entanglement test was not applicable to a student aid program.

Kansas: Tuition Grants-1974

Litigation in Kansas already has had a far-reaching impact. A federal district court ruled the Kansas student tuition grant program constitutional as applied to institutions exhibiting certain characteristics.[65] Expanding the *Tilton* criteria, the court said that an institution would be eligible to participate in the program if: denominational influence was minimal; financial assistance from the church was minimal; no religious qualifications were imposed for admission of students or hiring of faculty; participation in religious activities was voluntary; the curriculum contained no courses involving sectarian indoctrination; there was an absence of a purpose to inculcate religious values; and there was a high degree of academic freedom. An infirmity in *any one* of these criteria would preclude an institution from participating in the program. The court held that five of the institutions violated at least one of the criteria but that the institutions might "become eligible to participate in the tuition grant program by taking appropriate action to eliminate the particular infirmities found herein as a bar to participation." [66]

The message was not lost. Each of the five Kansas institutions undertook the required changes. Three colleges dropped required chapel attendance. One college had required a senior year comprehensive oral examination which the court interpreted as "forcing" students to express a commitment to the Christian faith. Although the faculty of the college challenged this interpretation, it abolished the senior orals. The fifth college changed admissions policies that had given preference to students from the denomination and had required a letter of recommendation from the student's pastor.

Missouri: Tuition Grants-1976

The first decision rendered after *Roemer* was a Missouri Supreme Court opinion sustaining a student aid program. The program provided tuition grants directly to students who attended 26 state and 31 independent institutions—17 of which were church-affiliated. In what was likely the shortest decision issued to date—one page—the program was ruled unconstitutional by a county circuit judge in January, 1976, on the basis of the Establishment Clause and various sections of the Missouri Constitution.[67] Well known is the fact that Missouri's constitutional provisions are among the most specific in their prohibition of church-state relationships.

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[65] Americans United v. Bubb, 379 F. Supp. 872 (D. Kan. 1974).

[66] *Id.* at 888.

The adverse decision was immediately appealed to the Missouri Supreme Court. On July 26, about one month after *Roemer*, a divided court sustained the program by a 4-3 decision; separate opinions were submitted by one concurring judge and each of the three dissenting judges.[68] The court decided only that the statute was constitutional on its face; no institutional eligibility decisions had been rendered by the circuit court judge nor did the Supreme Court address these specific questions. The court plurality relied substantially on *Roemer* for its Establishment Clause analysis.

Even though the statute established a program of student aid, the statute set out a number of eligibility criteria for student and institutional participants that were key to the court determination that the program passed the Establishment Clause challenge. An approved institution, among other things, had to be accredited and under the control of an independent board (i.e., not under the control of a church denomination); had to refrain from discriminating in the hiring of personnel or in the admission of students on the basis of religion and other factors; and had to permit "faculty members to select textbooks without influence or pressure by any source." In addition, applicants who intended to pursue a course of study leading to a degree in theology or divinity were ineligible for a grant.

Applying the *Roemer* analysis, the court had little difficulty with the secular legislative purpose parts and with the entanglement parts since it found that student aid involved far less entangling relationships than the noncategorical institutional aid sustained in *Roemer*. Noteworthy is the suggestion by the court that political divisiveness is substantially diminished if not eliminated "when student eligibility does not turn on whether or not a public or private institution is attended."[69]

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[67] Americans United v. Rogers (Circuit Court, St. Louis, filed January 26, 1976).
[68] Americans United v. Rogers, 538 S.W.2d 711 (1976).
[69] *Id.* at 718.

The court based its decision on the fact that the statute precluded aid to a religious institution by requiring an independent board and that accreditation assured an atmosphere of academic freedom precluding religious indoctrination. The ingredients of the *Tilton* model of a nonpervasively sectarian institution, although not directly discussed in these terms, were assured by the statutory criteria.[70] The program also met the very stringent Missouri constitutional standards. Prior to this ruling, the Missouri Supreme Court had repeatedly struck down aid to church-related elementary and secondary schools, including funds for textbook loans and school buses.

The Board responsible for administering the program may now have to issue guidelines on institutional eligibility that might preclude several institutions from being eligible for the funds. In addition, the plaintiffs plan to seek U.S. Supreme Court review of the decision.

Additional Challenges: Unresolved

Louisiana: Institutional Aid

A Louisiana program in which aid is provided, as in Maryland, to independent institutions in accordance with the number of students in attendance has been challenged. Not only does the program violate the First Amendment Establishment Clause, argue the plaintiffs, but the program directs aid to institutions characterized by racial and sexual discrimination. Of eight colleges challenged, seven are church-related.

The original legislation was defective in that it did not have a secular use provision and thus would likely have been found unconstitutional on its face. However, the 1976 legislature added a secular use restriction to the legislation. A federal district court trial will be held in late 1976.

Arkansas: Student Aid

A lawsuit filed in Arkansas challenges the state tuition program providing funds for students to attend state and independent institutions. The plaintiffs argue that because the funds will go indirectly to church-related institutions, the program violates the Establishment Clause.

Prior to the challenge, the Attorney General had issued an opinion that the program on its face was constitutional. However, if scholarships were granted to students attending pervasively sectarian institutions, the program to that extent would be unconstitutional. The Attorney General recommended that the Department of Higher Education adopt guidelines similar to those incorporated in the Kansas decision. After the Department developed such guidelines, three colleges were ruled ineligible to participate. Subsequently, one of these institutions was ruled eligible for the program. The Attorney General's opinion followed the U.S. Supreme Court's reasoning that the constitutionality of the aid is dependent upon the character of the recipient institution.

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[70] However, the Missouri Supreme Court offered a caveat. The board administering the program must apply the statutory restrictions to the colleges and universities; institutional eligibility decisions of the Board could be subject to challenge.

But the Arkansas independent college association has taken a different approach. The association supported intervention on behalf of students from both independent and state institutions who will be affected by the court ruling. The premise is that there is no need to examine the character of the institution since the funds are paid directly to students. Thus, for the first time the issue of student aid has been litigated specifically on the theory that there is no need to examine the institutions students attend. A decision from the federal district court is expected in Fall, 1976.

Tennessee: Student Aid

In Tennessee a tuition grant program was also challenged. Although the plaintiffs did not name any colleges as defendants, their complaint cited catalog material from four religiously-affiliated colleges. In addition, depositions were taken from the presidents of four admittedly sectarian institutions. No testimony was taken at the federal district court hearing. The court did not examine the institutions but struck down the statute because it lacked a secular use restriction.[71]

The case was appealed to the U.S. Supreme Court and was accepted for review along with *Roemer*. Concurrently, the 1975 Tennessee Legislature amended the statute to include a secular use restriction. After this amendment was adopted, the Supreme Court, upon request, remanded the case to the district court for reconsideration. Many had hoped that the issue of student aid could have been resolved by the Supreme Court in the Tennessee case; had it been decided, that decision coupled with the *Roemer* institutional aid decision would have defined the constitutional framework.

Since the legislature did not provide funding for the program, there was no immediate activity in the district court. However, during the 1976 session of the Tennessee legislature, the colleges adopted a strategy that involved repealing the existing tuition grant program and replacing it with a new scheme identified as a student financial assistance program. A small state appropriation was made in order to qualify for federal State Student Incentive Grant matching funds for the 1976-77 academic year. The new legislation omitted a secular use restriction, because, said the legislators, such a restriction was "a feature of direct institutional aid programs and has not been held in any judicial proceeding to be a legal or constitutional requirement for a program of student financial assistance." [72]

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[71] Americans United v. Dunn, 384 F. Supp. 714 (M.D. Tenn. 1974).

The defendants then moved to have the suit dismissed. The District Court supported the defendants by dismissing the case as moot.[73] The court suggested that in order to clarify the litigation a new lawsuit was necessary. Within two weeks a new challenge was filed—only two days after *Roemer* was decided by the Supreme Court. The new scheme, argued the challengers, had the primary effect of aiding religious institutions even though the funds were channeled through students who were "mere conduits" for such financing. Student intervenors plan to argue that the legislation provides aid directly to students and therefore requires no institutional analysis.

If the federal district court follows the same reasoning it applied in the initial challenge, the court is likely to permit the plaintiffs to introduce evidence of the religious character of the institutions and to issue an opinion based on that assessment and not on the student aid theory. Regardless of the outcome, it is likely that the decision will be appealed, unless other student aid challenges reach the Supreme Court first.

North Carolina: Student Aid

A law suit was filed in April, 1976, challenging programs that are best characterized as "student aid," although there is an institutional aid component. Two institutions, Catholic and United Methodist-related, are named as defendants.

Four programs are involved in the litigation: 1) a student loan program; 2) a scholarship program for independent institutions to be allocated to North Carolina students with financial need; 3) a grant program for students with financial need in both state and independent institutions; and 4) a tuition offset program for all North Carolina students who attend independent institutions.

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[72] Tennessee Public Acts of 1976, Chapter 415.
[73] Americans United v. Blanton (M.D. Tenn., filed June 11, 1976).

The challenge is based on the First Amendment; no state constitutional provisions are invoked. The loan program was sustained by the District Court on the basis of the *Durham* ruling[74] that loan programs raising funds through the sale of revenue bonds did not violate the Establishment Clause since the primary effect was to aid students and not religious institutions.

The North Carolina litigation, because of the complexity of the several programs, is not likely to yield a very instructive decision for future litigation. The federal court could make an assessment of institutional eligibility or it could rule each of the statutes constitutional on its face and leave institutional eligibility decisions to some other agency. Certain institutions might be ineligible by *Tilton-Hunt-Roemer* standards.

Western Maryland College—One Response to Litigation

Western Maryland College has been involved in constitutional litigation since 1965. The first round was fought over state grants to church-related colleges for construction of educational facilities. In the 1966 *Horace Mann* decision, the state's highest court developed indicia of religious character to determine what institutions would qualify for funds for construction of academic facilities.[75] Applying these criteria against the defendant colleges, the Court ruled three of the four church-related colleges, including Western Maryland, ineligible for funding.

Later Western Maryland found itself in court as one of five defendants in *Roemer*. Drawing on the Supreme Court opinions in *Tilton* and *Hunt*, the federal district court held Western Maryland eligible for the institutional aid program but the plaintiffs appealed to the U.S. Supreme Court. The college found preparation for the trial and litigation demanding in terms of both financial and psychic resources. In *Roemer*, for example, the district court trial lasted approximately five weeks and yielded about 2,000 pages of testimony. When the plaintiffs appealed, the college had to assess the prospects for a favorable decision. Western Maryland perceived its relationship with The United Methodist Church as tenuous. The college had not received any operating funds directly from the church for several years and the program of the institution had all the indicia of a nonsectarian institution. In view of the lack of clarity on the constitutional framework and the predicted drain on institutional resources, a decision was made to negotiate with the plaintiffs. Western Maryland negotiated a stipulation with the plaintiffs and subsequently was dismissed as a party to the lawsuit.

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[74] Durham v. McLeod, 192 S.E.2d 202 (1972), *appeal dismissed*, 413 U.S. 902 (1973).

[75] Horace Mann League v. Board of Public Works, 220 A.2d 51 (1966), *cert. denied*, 385 U.S. 97 (1966). In this decision the Maryland court catalogued numerous religious criteria.

The most controversial aspects of this stipulation relate to requirements that the college remove all religious symbols, including crosses, from its buildings, that it remain "totally neutral as to the spiritual development (in a religious sense) of its students," and that by July 1, 1981, 50% of the teaching faculty of the Department of Philosophy and Religion would be non-Methodist.[76]

Several key sections of the sixteen-paragraph stipulation follow:

> Western Maryland College shall promptly and permanently remove all religious symbols and indicia of church-relatedness, including but not limited to crosses, from the buildings and public rooms of its campus except as otherwise provided herein. . . .
>
> Western Maryland College shall remain totally neutral as to the spiritual development (in a religious sense) of its students and shall not adopt, maintain, or pursue any objective, policy, or plan of encouraging or discouraging such spiritual development. . . .
>
> Western Maryland College acknowledges that it has completed a process of disaffiliation from the Methodist Church and that it shall not renew any such affiliation in the future or establish any affiliation with any church or organization.

Clearly envisioned was the use of this agreement as a model in litigation in other states. Included in the agreement was a requirement that the institution refrain from holding baccalaureate services, even though Western Maryland had not held baccalaureate services for a number of years.

The Western Maryland concessions were heralded by Americans United for Separation of Church and State, representing the plaintiffs, as one of the top ten church-state stories of 1975. The organization proclaimed to its members: "Western Maryland College agreed to completely secularize itself, even to the extent of removing the cross from the chapel, in order to be excused from a lawsuit challenging state aid to sectarian colleges."[77]

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[76] Stipulation between Appellants and Western Maryland College, Appellee, March, 1975.

The college responded to varied criticism through its chairman of the board. In summary, the chairman wrote:

> The trustees and administration have worked deliberately and thoughtfully as we faced difficult decisions. There has been one overriding concern: to assure the future of Western Maryland as a quality liberal arts college consistent with that to which it formally and in fact is committed.[78]

What is the significance of the agreement? The college gave up more than was required given the litigation framework as refined by *Roemer*. But Western Maryland, left to rely on its own resources, was simply weary of the struggle. Had there been a concerted strategy and offers of real support from the entire church-related higher education sector, the outcome might have been different. Too often in precedent-setting litigation, institutions are hard pressed to mount the resources to meet the challenges alone. As it turned out, the college would not have had to make the agreement in order to maintain its state aid.

Unresolved Issues

There are three major issues yet unresolved: 1) the constitutionality of student aid and whether student aid requires institutional analysis; 2) when institutional analysis is applied, whether an institution must meet each of the *Tilton* institutional criterion to be eligible for aid; and 3) what appropriate administrative regulations are needed to enforce the secular use requirements and at the same time avoid an entangling relationship with religiously affiliated institutions. In addition, a few state programs may still be subject to challenge under church-state and public purpose provisions of state constitutions.

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[77] *Top Ten Church-State Stories of 1975*, Church & State, January, 1976 at 8. Of note is a pamphlet published by Americans United for Separation of Church and State in which the argument is made that churches should either be able to support their institutions or turn them into public institutions, Lowell, Church College: Perils of Government Aid (1975).

[78] Preston, *God is Still Alive at Western Maryland*, The Baltimore Sun, September 6, 1975. See the editorial *Religious Neutrality*, The Wall Street Journal, September 23, 1975 at 26, and the letter to the editor in response to the editorial by the president of Western Maryland College, Ralph C. John, *Western Maryland College*, The Wall Street Journal, October 6, 1975 at 13.

Student Aid

What will the Supreme Court do regarding tuition grants? It can be assumed that because the Court dismissed potential entanglement and primary effect problems in *Roemer*, it will also uphold tuition grant programs. The Missouri Supreme Court has already sustained such a program based on *Roemer*.

The troublesome question, however, is whether such aid can be used at an institution that is "pervasively sectarian." The U.S. Supreme Court has never confronted in litigation an institution of higher education that it found to be pervasively sectarian. Thus far, the litigation in state and federal courts has always involved an assessment of institutional eligibility criteria or of the institutions themselves. Litigants in Arkansas and Tennessee put forth another approach based on a student aid theory. Higher education is not compulsory as is elementary and secondary education. If a student receives the money, it is the student—and not the state—who makes the choice to enter an institution of higher education and who chooses the particular type of institution.[79] Therefore there is no need to trace those funds into the institution and to make an assessment of the religious character of the college or university selected. For example, the G.I. Bill, which allows veterans to use their educational benefits at a college of their choice, has never been challenged in court.

Absent an institutional analysis, student aid is susceptible to challenges on primary effect grounds. In *Committee for Public Education and Religious Liberty* v. *Nyquist*,[80] the Supreme Court held that a New York program which included tuition grants for low-income students to attend nonpublic elementary and secondary schools violated the Establishment Clause since, as the Court viewed it, the program provided indirectly massive amounts of public funds to sectarian institutions. There was no way to guarantee that the funds would be used only in support of secular activities. However, Justice Powell, speaking for a majority of the Court, noted in a footnote that a program in which aid was available to the student population generally might be permissible:

> Because of the manner in which we have resolved the tuition grant issue, we need not decide whether the significantly religious character of the statute's beneficiaries might differentiate the present cases from a case involving some

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[79] See *Memorandum on the Impact of the First Amendment to the Constitution Upon Federal Aid to Education*, 50 GEORGETOWN L. J. 349, 379.

[80] Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).

> *form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited.*[81] (Emphasis added.)

Justice Burger dissented from the Court's holding regarding the tuition grant program and asserted that part of the program should have been sustained:

> There are at present many forms of government assistance to individuals that can be used to serve religious ends, such as social security benefits or "G.I. Bill" payments, which are not subject to nonreligious-use restrictions. Yet, I certainly doubt that today's majority would hold those statutes unconstitutional under the Establishment Clause.[82]

However, the *dictum* of Justice Blackmun in *Roemer* must be taken seriously. He dilutes the thrust of Justice Powell's note and undercuts the efficacy of the student aid theory when, as noted earlier, he warns that the state may not pay for a "religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike." [83]

This comment suggests the possibility that regardless of the form of the aid, pervasively sectarian institutions are ineligible for aid under the Court's Establishment Clause analysis. Such an interpretation would maintain an internal consistency between the Court's almost total disapproval of aid to elementary and secondary schools, because it views such institutions as pervasively sectarian, and its approval of aid to non-pervasively sectarian colleges and universities. However, the adoption of the student aid theory would have the benefit of eliminating the entangling, agonizing and difficult assessments that courts have to make as to whether a religiously affiliated institution has as its primary mission religious indoctrination or whether its religious mission is only secondary to its academic one.

Federal student aid funds are presently awarded *without regard* to the religious character of the institution. If the student aid theory is specifically rejected by the Court, both federal and state governments will be required to place institutional eligibility criteria on aided institutions. Some institutions may find themselves in a worse position than before

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[81] *Id.* at 782-783 n. 38.

[82] *Id.* at 804 (Burger, J., concurring in part and dissenting in part).

[83] 49 L.Ed.2d at 188.

—especially those institutions that now receive more federal student aid than aid from state programs.

Must All Criteria Be Met?

In *Tilton*, the Supreme Court found that the institutions satisfied each of the criteria set forth in the decision relating to students, faculty selection, religious programs, and academic freedom. In *Tilton, Hunt*, and *Roemer*, the Court did not say specifically whether an institution found defective in any one of the criteria would be thus ineligible. On the other hand, the Kansas Federal District Court applied its own criteria to the institutions and found that one defect precluded participation. The excluded institutions undertook appropriate remedies.

The Court in *Roemer*, the most recent decision, was ambiguous on this point. The Court said that an eligible institution must meet the *Tilton* criteria even though the Court indicated that it would tolerate certain religious relationships and characteristics.

Administrative Regulations

Institutional or noncategorical aid must be accompanied by secular use restrictions and supporting procedures and regulations to assure that funds are not used to support religious activities. No doubt independent colleges will be required to report and to account for state funds. The Maryland guidelines were extensive although arguably not that intrusive.

The Establishment Clause offers independent institutions protection from bureaucratic intrusion. If a state as a matter of public policy chooses to aid independent institutions, it must develop guidelines for the use of those funds. However, such guidelines must be developed and administered in such a way as to preclude entangling relationships with the religiously-affiliated institutions. As Justice Blackmun noted in *Roemer*, the audits would be "quick" and "non-judgmental." Ironically, First Amendment constraints may check the natural bureaucratic tendency to over-regulate.

State Constitutional Challenges

States that have more restrictive provisions than the Establishment Clause regarding aid to religious institutions will continue to be a locus for litigation. In some states the only option may be the constitutional amendment process. Several states have passed amendments permitting aid to all independent institutions. In Virginia, for example, after several years of extended litigation the electorate ratified an amendment that permitted grants to students to attend any institution and that provided a method for direct aid to all independent institutions including church-related ones. On the other hand, efforts in the State of Washington to amend the constitution were frustrated by those who opposed aid to parochial elementary and secondary schools. However, the Missouri Supreme Court decision raises the possibility that even in states with restrictive state constitutional provisions, aid programs can be formulated.

Conclusions

Aside from the few unresolved issues noted above, there is a substantial framework to guide legislators in drafting programs. Institutional aid legislation must include secular use restrictions to preclude public funds being used for sectarian purposes. Aid is permissible if the sectarian functions of an institution can be separated from the secular and if enforcement of the secular use restriction does not entangle the state in religious activity. The application of the primary effect and entanglement analyses turns on the character of the institution: if the institution is not pervasively sectarian, then these parts of the test are met. Thus far, the Court has overlooked certain indicia of church-relatedness including formal denominational control, limited church support, courses in religion required as part of liberal arts education, and the presence of substantial numbers of students, faculty, and board members who are from the sponsoring denomination.

What course is future litigation likely to take? It appears that litigation in higher education will focus primarily on whether *specific* institutions are eligible for aid under the *Tilton* criteria and the process by which that aid is provided and administered. The burden of proof in establishing that aid is being received by pervasively sectarian institutions will fall on the plaintiff. And it is a heavy burden. Plaintiffs would prefer, of course, to challenge programs on their face—as has been done successfully in elementary and secondary aid programs—without having to undertake a full-blown examination of each institution.

Any institution facing constitutional litigation will have to be very clear on its purpose, and if certain religious aspects are valued by the institution they should be retained. If, however, statements of mission and purpose are what Justice Burger has characterized as "institutional rhetoric," they should be excised.

Given the existing litigation framework, the essence of an eligible nonpervasively sectarian institution relates to open admissions and hiring, an absence of indicia of compulsory religious activities, and an affirmation of academic freedom by the institution. Institutions should not, as some did following *Tilton*, feel impelled to make radical program changes until the necessity is clearly evident.

Although the constitutional framework is reasonably well settled, issues of public policy are far from resolved. *Roemer* is now the law of the land, but many thoughtful and articulate persons will continue to oppose the allocation of resources to church-related institutions of higher education. Notes one Baptist leader it "is now legal" for church-related colleges to receive tax money, but it still is "not now right." [84] Americans United asserts that the wall of separation still stands, although "a little battered," and has reaffirmed its commitment to pursue litigation challenging programs that aid church-related colleges. [85]

Even if the constitutionality of aid is accepted, there will be a tug of war for precious funds. The amount of money at stake is considerable; the four remaining colleges challenged in *Roemer* will receive $1.7 million for the academic year 1976-77. Representatives from the state sector of education can be expected to oppose aid to independent institutions as they struggle with their own problems encountered during the management of decline. In Maryland, Louisiana, and Tennessee, educators from the state sector have been parties to court challenges.

The importance of independent institutions pooling their resources can not be overstated. Institutions must collaborate, for example, in the drafting of legislation so that state programs fall within the constitutional framework already established. Colleges like Western Maryland can not be left alone in important court challenges, the outcome of which have profound impact on all independent colleges. Independent institutions must work together in devising effective litigation strategy. What happens to one, affects all. Lower court decisions that initially struck down programs in Missouri and Tennessee resulted in the programs being invalidated for *all* independent institutions. Thus, independent institutions with no church affiliation were denied aid as well.[86]

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[84] Quoted in *Ruling on Aid to Colleges Provokes Mixed Reaction*, The Christian Century, September 1-8, 1976 at 726.

[85] *College Aid and the Supreme Court: Muddy Waters*, Church & State, September, 1976 at 12.

[86] The National Commission on United Methodist Higher Education is considering the feasibility of a public interest law firm to offer legal advice to independent colleges on issues such as church-state relations, government regulations and personnel policies.

If certain institutions are held ineligible for public funds because of their sectarian nature, other problems follow. Some institutions have accepted their exclusion gracefully. Some have "cured" their defects and achieved eligibility. Some, like Louisiana College, have declined aid as a matter of principle—an action consistent with the traditional position of the Louisiana Baptist Convention on church-state separation. In the present environment, in which competition for students and resources is keen, excluded institutions might be tempted to work against state aid programs that would place them at a competitive disadvantage relative to other independent institutions. It is conceivable that legislators in some states would no longer be interested in tuition grant programs if certain sectarian institutions were excluded.

If this nation is committed to pluralism and diversity in education, then public funding of student aid programs is essential. The independent sector cannot offer a viable alternative to the heavily subsidized state systems if the tuition is unaffordable for the vast majority of students. Public funding is constitutional and challenges can be won in the courts; independent colleges must convincingly assert the case.

TABLE 11. *SUMMARY OF CHURCH/STATE CONSTITUTIONAL CHALLENGES TO PROGRAMS OF PUBLIC FUNDS AND CHURCH-RELATED HIGHER EDUCATION, 1970-1976*

State	Case Name	Type Program Challenged	Church-State Challenges State Const.	Federal Const.
RESOLVED				
Alabama	Opinion of the Justices, 280 So. 2d 547 (1973)[1]	Tuition Grants—Independent Sector	Unconstitutional	Unconstitutional
California	California Educational Facilities Authority v. Priest, 526 P.2d 513 (1974)	Educational Facilities Authority—Independent Sector	Constitutional	Constitutional
Connecticut	Tilton v. Richardson, 403 U.S. 672 (1971)[2]	Construction Grants—Independent & State Sectors	Not at issue	Constitutional
Florida	Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (1971)	Educational Facilities Authority—Independent & State Sectors	Constitutional	Constitutional
Kansas	Americans United v. Bubb, 379 F. Supp. 872 (D. Kan. 1974)	Tuition Grants—Independent Sector	Not at issue	Constitutional
Kentucky	Americans United v. Pryor (Franklin Circuit Court No. 84114, March 11, 1974)	Tuition Grants—Independent Sector	Constitutional	Constitutional
Illinois	Cecrle v. Illinois Educational Facilities Authority, 288 N.E.2d 399 (1972)	Educational Facilities Authority—Independent Sector	Constitutional	Constitutional
Maryland	Roemer v. Board of Public Works, 49 L.Ed.2d 179 (1976)	Institutional Aid—Independent Sector	Not at issue	Constitutional
Minnesota	Minnesota Higher Education Facilities Authority v. Hawk, 232 N.W.2d 106 (1975)	Educational Facilities Authority—Independent & State Sectors	Constitutional	Constitutional
Missouri	Americans United v. Rogers, 538 S.W. 2d 711 (1976)	Tuition Grants—Independent & State Sectors	Constitutional	Constitutional
New Jersey	Clayton v. Kervick, 267 A.2d 503 (1970) Clayton v. Kervick, 285 A.2d 11 (1971)	Educational Facilities Authority—Independent & State Sectors	Not at issue	Constitutional
Nebraska	State ex rel. Rogers v. Swanson, 219 N.W.2d 726 (1974)	Tuition Grants—Independent Sector	Unconstitutional	Unconstitutional
South Carolina	Hunt v. McNair, 413 U.S. 734 (1973)	Educational Facilities Authority—Independent & State Sectors	Not at issue	Constitutional
	Durham v. McLeod, 192 S.E.2d 202 (1972)[3]	Guaranteed Student Loans—Independent & State Sectors	Constitutional	Constitutional
	Hartness v. Patterson, 179 S.E.2d 907 (1971)	Tuition Grants—Independent Sector	Unconstitutional	Did not decide

TABLE 11. *(Continued)*

State	Case Name	Type Program Challenged	Church-State Challenges	
			State Const.	Federal Const.
Tennessee	Americans United v. Dunn, 384 F. Supp. 714 (M.D. Tenn. 1974)[4]	Tuition Grants—Independent & State Sectors	Not at issue	Unconstitutional
Virginia	Miller v. Ayres, 191 S.E.2d 261 (1972)	Student Loans—Independent & State Sectors	Unconstitutional	Constitutional
	Miller v. Ayres, 198 S.E.2d 634 (1973)	Student Loans—Independent & State Sectors	Part of Program Sustained	Constitutional
Washington	Weiss v. Bruno, 509 P.2d 973 (1973)	Tuition Grants—Independent Sector	Unconstitutional	Unconstitutional
Wisconsin	State ex rel. Warren v. Nusbaum, 198 N.W.2d 650 (1972)	Purchase of Dental Education—Independent Sector Institution	Unconstitutional	Unconstitutional
		PENDING		
Arkansas	Lendall v. Cook (D. Ark., 1975)	Tuition Grants—Independent & State Sectors	Not at issue	
Louisiana	Citizens for Advancement of Public Education v. Board of Regents (E.D. La., 1975)	Institutional Aid—Independent Sector	Not at issue	
North Carolina	Smith v. Board of Governors (W.D.N.C., 1976)	Student Loans and Tuition Grants—Independent & State Sectors; Tuition Offsets & Scholarships—Independent Sector	Not at issue	
Tennessee	Americans United v. Blanton (M.D. Tenn., 1976)	Tuition Grants—Independent & State Sectors	Not at issue	

NOTE: Challenges to programs that did not involve the Establishment Clause are not listed.

[1] An advisory opinion rendered by the Alabama Supreme Court.

[2] Involved the Federal Higher Education Facilities Act of 1963.

[3] *Appeal dismissed for want of substantial federal question*, 413 U.S. 909 (1973).

[4] *Vacated*, 421 U.S. 958 (1975), *dismissed on remand*, _____ F. Supp. _____ (June 11, 1976).

APPENDIX

APPENDIX TABLE 1. *PERCENT DISTRIBUTION OF FULL-TIME FRESHMEN BY TYPES OF INSTITUTIONS, BY FAMILY INCOME LEVEL AND BY SECTOR, FALL, 1973*

Income Level	2-Year Colleges		4-Year Colleges		Universities		Total	
	State	Indep.	State	Indep.	State	Indep.	State	Indep.
Under $3,000	54%	4%	17%	15%	7%	2%	78%	21%
$3,000-$5,999	52%	3%	19%	15%	9%	2%	80%	20%
$6,000-$9,999	47%	3%	19%	15%	13%	2%	79%	20%
$10,000-$14,999	42%	2%	20%	14%	17%	3%	79%	19%
$15,000-$19,999	35%	3%	22%	15%	21%	3%	78%	21%
$20,000-$24,999	29%	2%	22%	16%	24%	6%	75%	24%
$25,000 or More	21%	3%	17%	23%	25%	11%	63%	37%
All Incomes	38%	3%	20%	16%	18%	5%	76%	24%

Note: Rows may not equal 100% because of rounding.

SOURCE: P. Christoffel and L. Rice, *Federal Policy Issues and Data Needs in Postsecondary Education*, final report to the National Center for Education Statistics, U.S. Dept. of Health, Education & Welfare, 1973, p. 10.

APPENDIX TABLE 2. *NONWHITE ENROLLMENT BY INSTITUTIONAL TYPE, FALL, 1972, IN THOUSANDS OF STUDENTS*

Institutional Type	Independent Sector			State Sector			Total		
	Total Enrollment	Nonwhite Enrollment	Percent	Total Enrollment	Nonwhite Enrollment	Percent	Total Enrollment	Nonwhite Enrollment	Percent
Research Univ.	379	33	8.7%	1,012	58	5.7%	1,391	91	6.5%
Doctoral	198	11	5.6%	526	48	9.1%	724	59	8.1%
Comprehensive	485	32	6.6%	2,038	217	10.6%	2,523	249	9.9%
Liberal Arts	672	68	10.1%	29	1	3.4%	701	69	9.8%
Two-Year	86	6	7.0%	1,914	181	9.5%	2,000	187	9.4%
Specialized	207	5	2.4%	63	11	17.5%	270	16	5.9%
Others	13	4	30.8%	426	27	6.3%	439	31	7.1%
TOTAL	2,040	159	7.8%	6,008	543	9.0%	8,048	702	8.7%

SOURCE: Calculations based on data from *Financing Postsecondary Education in the United States*, The National Commission on the Financing of Postsecondary Education, Washington, DC, U.S. Government Printing Office, 1973, p. 143.

APPENDIX TABLE 3. *COMPARISON OF COMMISSION CLASSIFICATION STRUCTURE WITH SAME STRUCTURE APPLIED TO NATIONAL DATA (SPECIALIZED INSTITUTIONS EXCLUDED)*

Type of Institution	State		Independent		Total		Methodist		Methodist as % of Indep.
	No.	%	No.	%	No.	%	No.	%	
Doctoral Granting	108	9%	65	6%	173	7%	8	8%	12%
Comprehensive Colleges	308	25%	145	13%	453	19%	14	13%	10%
Liberal Arts I	2	—	144	12%	146	6%	10	9%	7%
Liberal Arts II	26	2%	547	47%	573	24%	55	52%	10%
Two-Year	805	64%	256	22%	1,061	44%	19	18%	7%
TOTAL	1,249	100%	1,157	100%	2,406	100%	106	100%	9%

SOURCE: Calculated from *A Classification of Institutions of Higher Education*, A Report by the Carnegie Commission on Higher Education, 1973, pp. 6-7, and data developed by the staff of the National Commission on United Methodist Higher Education.

APPENDIX TABLE 4. *CHARACTERISTICS OF ALL STUDENTS (UNDUPLICATED COUNT)[a] RECEIVING AID UNDER OFFICE OF EDUCATION ASSISTANCE PROGRAMS, BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	1,584,000	1,034,000	335,000	419,000	280,000	551,000	36,000	420,000	94,000
Ethnic Group									
Minority	33.6	38.3	49.4	38.0	24.7	24.8	25.5	24.8	24.7
Nonminority	66.4	61.7	50.6	62.0	75.3	75.2	74.5	75.2	75.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	51.0	52.3	56.5	50.6	49.3	48.7	50.0	49.9	42.6
Male	49.0	47.7	43.5	49.4	50.7	51.3	50.0	50.1	57.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	33.3	35.6	33.0	41.8	31.3	28.2	38.0	28.6	22.7
$7,500-$11,999	24.8	24.4	24.5	23.6	25.3	25.8	31.1	26.3	21.6
More than $11,999	19.1	14.0	12.9	13.6	16.5	30.0	21.0	32.2	24.4
Independent Undergraduates	18.0	22.0	29.6	16.2	17.4	9.3	9.9	8.5	12.4
Graduate Students	4.8	3.9	—	4.8	9.5	6.8	—	4.5	18.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

[a] Excludes Guaranteed Student Loan program.

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 17.

APPENDIX TABLE 5. *CHARACTERISTICS OF PARTICIPANTS IN THE BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM (BEOG), BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	543,000	419,000	210,000	144,000	65,000	123,000	17,000	89,000	18,000
Ethnic Group									
Minority	48.1	49.2	54.7	48.3	34.0	44.0	31.2	44.9	51.4
Nonminority	52.0	50.8	45.3	51.7	66.0	56.0	68.8	55.1	48.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	54.5	55.2	57.0	54.4	50.8	52.4	47.9	54.7	44.8
Male	45.5	44.9	43.0	45.6	49.2	47.6	52.1	45.3	55.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	53.5	54.4	53.3	58.2	50.5	50.1	48.4	50.2	51.3
$7,500-$11,999	25.3	23.2	20.7	24.1	29.5	32.5	34.4	32.3	32.0
More than $11,999	7.3	6.6	4.7	7.9	9.9	9.8	9.0	9.7	11.3
Independent Undergraduates	14.0	15.9	21.3	9.8	10.1	7.6	8.3	7.8	5.5
Graduate Students	—	—	—	—	—	—	—	—	—
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 19.

APPENDIX TABLE 6. *CHARACTERISTICS OF PARTICIPANTS IN THE SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM (SEOG), BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	350,000	241,000	74,000	109,000	57,000	109,000	7,000	86,000	16,000
Ethnic Group									
Minority	47.8	49.0	55.7	50.6	38.0	45.0	40.7	44.8	48.0
Nonminority	52.3	51.0	44.3	49.4	62.0	55.0	59.3	55.2	52.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	54.1	55.2	59.4	54.1	52.1	52.0	57.8	52.5	46.8
Male	45.9	44.9	40.6	45.9	47.9	48.0	42.2	47.5	53.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	54.3	54.0	45.2	60.4	53.2	55.0	55.5	56.0	49.1
$7,500-$11,999	22.4	19.2	15.0	19.8	23.8	29.1	25.9	28.2	35.8
More than $11,999	5.3	4.4	3.6	4.4	5.6	7.2	11.1	6.8	8.5
Independent Undergraduates	18.1	22.5	36.2	15.4	17.4	8.7	7.6	9.1	6.7
Graduate Students	—	—	—	—	—	—	—	—	—
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 20.

APPENDIX TABLE 7. *CHARACTERISTICS OF PARTICIPANTS IN THE COLLEGE WORK-STUDY PROGRAM (CWS), BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	575,000	362,000	105,000	176,000	81,000	213,000	15,000	167,000	31,000
Ethnic Group									
Minority	32.6	34.7	44.6	32.4	27.2	29.1	30.5	28.2	33.1
Nonminority	67.5	65.4	55.4	67.7	72.8	71.0	69.5	71.8	67.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	54.0	55.0	57.3	54.8	52.5	52.3	46.2	53.7	47.2
Male	46.0	45.0	42.7	45.2	47.5	47.7	53.8	46.3	52.8
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	38.5	41.2	44.9	42.4	33.8	33.6	47.8	33.7	26.4
$7,500-$11,999	25.9	24.8	23.3	26.3	23.6	28.0	34.3	27.8	26.0
More than $11,999	17.2	10.9	8.3	11.8	12.5	28.4	13.2	29.0	32.1
Independent Undergraduates	14.5	19.1	23.5	16.1	20.0	6.3	4.7	6.7	5.0
Graduate Students	3.9	4.0	—	3.5	10.2	3.8	—	2.8	10.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 21.

APPENDIX TABLE 8. *CHARACTERISTICS OF PARTICIPANTS IN THE NATIONAL DIRECT STUDENT LOAN PROGRAM (NDSL), BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	749,000	425,000	59,000	210,000	157,000	324,000	17,000	241,000	66,000
Ethnic Group									
Minority	28.9	32.0	41.3	33.2	26.9	24.8	23.6	24.6	25.9
Nonminority	71.1	68.0	58.8	66.8	73.2	75.2	76.4	75.4	74.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	49.6	51.1	55.5	52.1	48.2	47.6	55.0	49.3	39.7
Male	50.4	48.9	44.5	47.9	51.8	52.4	45.0	50.7	60.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	30.8	34.0	38.0	35.8	29.7	26.4	32.2	28.0	19.3
$7,500-$11,999	24.7	23.5	17.3	25.0	24.1	26.3	26.8	27.6	21.6
More than $11,999	21.4	13.7	5.9	14.7	15.6	32.1	25.8	32.4	32.6
Independent Undergraduates	17.0	22.8	38.8	19.8	20.3	8.8	15.2	9.1	6.2
Graduate Students	6.1	8.0	—	4.6	10.3	6.4	—	2.8	20.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 22.

APPENDIX TABLE 9. *CHARACTERISTICS OF PARTICIPANTS IN THE GUARANTEED STUDENT LOAN PROGRAM (GSL), BY TYPE AND CONTROL OF INSTITUTION, 1974-75 (IN PERCENTAGES)*

Characteristics	Total Institutions	State Institutions				Independent Institutions			
		Total	Two-Year	Four-Year	University	Total	Two-Year	Four-Year	University
Total	669,000	377,000	35,000	184,000	158,000	292,000	9,000	187,000	95,000
Ethnic Group									
Minority	18.0	17.7	21.1	19.6	15.0	18.3	7.8	14.3	26.6
Nonminority	82.0	82.3	78.9	80.4	85.0	81.7	92.2	85.7	73.4
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Sex									
Female	45.8	47.1	47.0	49.9	44.1	44.3	39.3	46.3	40.7
Male	54.2	52.9	53.0	50.1	55.9	55.7	60.7	53.7	59.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Status									
Dependent Undergraduates									
Family Income									
Less than $7,500	13.5	14.8	18.1	16.9	12.1	11.8	22.3	11.9	10.8
$7,500-$11,999	18.2	17.6	15.4	19.9	15.9	18.9	30.2	19.4	17.1
More than $11,999	37.3	33.0	18.9	36.2	32.8	42.7	40.6	50.9	26.4
Independent Undergraduates	15.6	22.0	47.6	17.8	21.1	7.5	7.0	7.7	7.1
Graduate Students	15.4	12.5	—	9.2	18.0	19.1	—	10.2	38.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

SOURCE: F. J. Atelsek and I. L. Gomberg, *Student Assistance: Participants and Programs 1974-75*, American Council on Education, December 1975, p. 23.

APPENDIX TABLE 10. *DISTRIBUTION OF SELECTED TYPES OF INSTITUTIONS BETWEEN INDEPENDENT AND STATE SECTORS OF HIGHER EDUCATION*

	State		Independent		Total	
	Number	Percent	Number	Percent	Number	Percent
Institutions attended predominantly by black students, 1973	50	43.9	64	56.1	114	100
Men's colleges, 1973	9	7.1	118	92.9	127	100
Women's colleges, 1973	2	1.4	140	98.6	142	100
Institutions with religious affiliation, 1973						
Protestant	—	—	493	—	—	—
Catholic	—	—	250	—	—	—
Other	—	—	35	—	—	—
Small colleges, 1974						
Enrollment less than 500	69	17.5	326	82.5	395	100
Enrollment between 500 and 1,000	177	35.8	317	64.2	494	100

SOURCE: *The States and Higher Education, Supplement,* Carnegie Foundation for the Advancement of Teaching, New York, 1976, p. 30.

APPENDIX TABLE 11. *CHARACTERISTICS OF FEDERAL LEGISLATION MANDATING SOCIAL PROGRAMS AT COLLEGES AND UNIVERSITIES.*

CHARACTERISTICS	Equal Employment Opportunity	Equal Pay	Affirmative Action	Age Discrimination	Wage and Hour Standards	Unemployment Compensation	Social Security Taxes	Health Maintenance Organizations	ERISA Retirement Benefits	Wage and Salary Controls	Occupational Safety and Health	Environmental Protection
Law does not cover public institutions because they are an agency of state government.						X[a]	X[b]		X	X	X[c]	
Law applies because college is an employer.	X	X	X	X	X	X	X	X	X	X	X	
Law applies if college is a federal contractor.			X		X							
College may be subject to similar state provisions if located in a state with such laws.	X	X	X	X	X	X			X		X	X
Law contains discretionary elements of compliance provisions.	X	X	X	X	X	X			X	X	X	X
Law requires faculty time to implement.	X	X	X									
Law requires administrative time to implement.	X	X	X	X	X				X	X	X	X
Administrative costs of compliance high relative to other compliance costs.	X	X	X							X		
Taxes, higher wages, or higher employee benefits costs required under law.		X			X	X	X		X			
Physical plant modifications required under law.											X	X
Higher or new costs anticipated in the future.	X		X	X	X	X	X	X	X		X	X

[a] Cost at state institutions depends on state provisions.

[b] Voluntary inclusion.

[c] Excluded under federal interim enforcement prior to mandated state enforcement.

SOURCE: Carol Van Alstyne and Sharon L. Coldren, *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities*, American Council on Education, 1976, p. 9.

APPENDIX TABLE 12. *AVERAGE STATE TUITION AS A PERCENT OF AVERAGE INDEPENDENT TUITION AND AVERAGE TUITION IN INDEPENDENT INSTITUTIONS MINUS AVERAGE TUITION IN STATE INSTITUTIONS, BY STATE AND TYPE OF INSTITUTION, 1974-75 (FOUR-YEAR INSTITUTIONS ONLY)*

	State tuition as a percent of average independent tuition		Average tuition in independent institutions minus average tuition in state institutions	
State	Universities and highly selective colleges	Comprehensive institutions and less selective colleges	Universities and highly selective liberal arts colleges	Comprehensive institutions and less selective colleges
United States	22%	25%	$2,090	$1,400
Alabama	—	36	—	840
Alaska	—	16	—	1,810
Arizona	—	31	—	740
Arkansas	—	42	—	580
California	22	10	2,230	1,710
Colorado	20	24	2,250	1,420
Connecticut	23	26	—	1,520
Delaware	—	20	—	1,510
Florida	22	32	2,080	1,240
Georgia	21	31	2,010	1,120
Hawaii	—	22	—	980
Idaho	—	18	—	1,540
Illinois	25	28	1,910	1,420
Indiana	28	26	1,850	1,150
Iowa	22	31	2,160	1,340
Kansas	—	32	—	1,090
Kentucky	54	30	560	990
Louisiana	12	24	2,280	970
Maine	18	20	2,570	1,820
Maryland	28	34	1,850	1,170
Massachusetts	19	17	2,400	1,810
Michigan	32	30	1,500	1,250
Minnesota	29	28	1,760	1,330
Mississippi	—	34	—	840
Missouri	23	19	1,960	1,390
Montana	—	31	—	1,020
Nebraska	—	30	—	1,220
Nevada	—	35	—	970
New Hampshire	28	32	2,590	1,580
New Jersey	23	33	1,960	1,280
New Mexico	—	37	—	670
New York	26	21	2,090	1,720
North Carolina	18	30	2,110	1,090
North Dakota	—	34	—	810
Ohio	29	34	1,930	1,330
Oklahoma	35	32	850	790
Oregon	20	34	2,150	1,130
Pennsylvania	38	42	1,650	1,130
Rhode Island	23	25	2,700	1,510
South Carolina	29	31	1,490	1,160
South Dakota	—	34	—	1,130
Tennessee	16	28	2,090	990
Texas	14	19	1,820	1,120
Utah	73	29	170	1,060
Vermont	30	33	2,570	1,460
Virginia	24	41	2,108	1,014
Washington	23	27	1,916	1,341
West Virginia	—	14	—	1,653
Wisconsin	21%	35%	$2,119	$1,085
Wyoming	—	—	—	—

Note: Data for state institutions relate to tuition and required fees, state residents. Differentials are based on average institutional tuitions by state. U.S. figure is weighted by number of institutions. Dashes indicate that comparable institutions do not exist in the category for comparative purposes.

SOURCE: *The States and Higher Education, Supplement*, Carnegie Foundation for the Advancement of Teaching, New York, 1976, pp. 31-32.

APPENDIX TABLE 13. *STATE AID TO INDEPENDENT INSTITUTIONS, BY TYPE OF PROGRAM, 1975-76*

State	Aid for general purposes	Aid to specified institution[a]	Funds for specific program or purpose[a]	Financial aid to independent college students[b]	Facilities construction aid[c]	Other types of aid
Alabama		x				
Alaska		x O		G L		
Arizona						
Arkansas				G		
California			x M	G	B	
Colorado						
Connecticut	x		x AVU	G L	B	
Delaware				G[e]		
Florida		x M		G L		
Georgia				G		
Hawaii						
Idaho				G[e]		
Illinois	x		x MDO	G	B	
Indiana				G		x[h]
Iowa		x O		G		
Kansas				G		
Kentucky				G L		
Louisiana	x	x M		G		
Maine				G		
Maryland	x			G L	G	
Massachusetts				G	B	
Michigan	x		x DOL	G L	B	x[h]
Minnesota	x	x M		G L	B	
Mississippi				G[f]		
Missouri				G		
Montana				G[f]		
Nebraska						
Nevada[d]						
New Hampshire		x M				
New Jersey	x		x VU	G	B	
New Mexico				L		
New York	x	x	x MDOVU	G L	B L	
North Carolina		x M	x AO	G L		
North Dakota				G		
Ohio		x MD	x U	G L	B	
Oklahoma				G L		
Oregon	x			G		
Pennsylvania	x	x	x M	G		
Rhode Island		x MU		G		
South Carolina			x U	G L[g]	B	x[i]
South Dakota				G		
Tennessee		x M		G		
Texas		x MDO		G L		
Utah						
Vermont				G		
Virginia				L		
Washington				G		
West Virginia				G		
Wisconsin		x MD		G L		
Wyoming						

Note: States in italics have no programs. An x indicates that the state has a program of this nature.

[a] Where aid is given for specific programs at specifically named institutions, it is reported under "aid to specified institution."

M = medicine
D = dentistry
O = other health-related professions
L = law
A = aid to students
V = disadvantaged students
U = unclassified or program fields other than above

[b] Two types of programs are indicated here:
G = grants
L = loans

[c] Three types of programs are shown here:
B = tax-exempt bond issuing authority
G = non-repayable grants
L = loans by a state agency

[d] Data are for 1974-75

[e] Very small program

[f] Information not available on whether independent students included

[g] Not known whether program is operating

[h] Tax credits for donations to independent colleges

[i] Authorization to use state purchasing facilities

SOURCE: *The States and Higher Education, Supplement*, Carnegie Foundation for the Advancement of Teaching, New York, 1976, pp. 35-36.

COLLEGES AND UNIVERSITIES AFFILIATED WITH THE UNITED METHODIST CHURCH

Adrian College
Adrian, Michigan

Alaska Methodist University
Anchorage, Alaska

Albion College
Albion, Michigan

Albright College
Reading, Pennsylvania

Allegheny College
Meadville, Pennsylvania

American University
Washington, D.C.

Andrew College
Cuthbert, Georgia

Baker University
Baldwin City, Kansas

Baldwin-Wallace College
Berea, Ohio

Bennett College
Greensboro, North Carolina

Bethune-Cookman College
Daytona Beach, Florida

Birmingham-Southern College
Birmingham, Alabama

Boston University
Boston, Massachusetts

Brevard College
Brevard, North Carolina

Centenary College of La.
Shreveport, Louisiana

Centenary College for Women
Hackettstown, New Jersey

Central Methodist College
Fayette, Missouri

Claflin College
Orangeburg, South Carolina

Clark College
Atlanta, Georgia

Columbia College
Columbia, South Carolina

Cornell College
Mount Vernon, Iowa

Dakota Wesleyan University
Mitchell, South Dakota

DePauw University
Greencastle, Indiana

Dickinson College
Carlisle, Pennsylvania

Dillard University
New Orleans, Louisiana

Drew University
Madison, New Jersey

Duke University
Durham, North Carolina

Emory and Henry College
Emory, Virginia

Emory University
Atlanta, Georgia

Ferrum College
Ferrum, Virginia

Florida Southern College
Lakeland, Florida

Green Mountain College
Poultney, Vermont

Greensboro College
Greensboro, North Carolina

Hamline University
St. Paul, Minnesota

Hawaii Loa College
Kaneohe, Hawaii

Hendrix College
Conway, Arkansas

High Point College
High Point, North Carolina

Hiwassee College
Madisonville, Tennessee

Huntingdon College
Montgomery, Alabama

Huston-Tillotson College
Austin, Texas

Illinois Wesleyan University
Bloomington, Illinois

Indiana Central University
Indianapolis, Indiana

Iowa Wesleyan College
Mount Pleasant, Iowa

Kansas Wesleyan
Salina, Kansas

Kendall College
Evanston, Illinois

Kentucky Wesleyan College
Owensboro, Kentucky

LaGrange College
LaGrange, Georgia

Lambuth College
Jackson, Tennessee

Lawrence University
Appleton, Wisconsin

Lebanon Valley College
Annville, Pennsylvania

Lindsey Wilson College
Columbia, Kentucky

Lon Morris College
Jacksonville, Texas

Louisburg College
Louisburg, North Carolina

Lycoming College
Williamsport, Pennsylvania

MacMurray College
Jacksonville, Illinois

Martin College
Pulaski, Tennessee

McKendree College
Lebanon, Illinois

McMurry College
Abilene, Texas

Meharry Medical College
Nashville, Tennessee

Methodist College
Fayetteville, North Carolina

Millsaps College
Jackson, Mississippi

Morningside College
Sioux City, Iowa

Morristown College
Morristown, Tennessee

Mount Union College
Alliance, Ohio

Nebraska Wesleyan University
Lincoln, Nebraska

North Carolina Wesleyan U.
Rocky Mount, North Carolina

North Central College
Naperville, Illinois

Ohio Northern University
Ada, Ohio

Ohio Wesleyan University
Delaware, Ohio

Oklahoma City University
Oklahoma City, Oklahoma

Otterbein College
Westerville, Ohio

Oxford College of Emory
Oxford, Georgia

Paine College
Augusta, Georgia

Pfeiffer College
Misenheimer, North Carolina

Philander Smith College
Little Rock, Arkansas

Randolph-Macon College
Ashland, Virginia

Randolph-Macon Woman's College
Lynchburg, Virginia

Reinhardt College
Waleska, Georgia

Rocky Mountain College
Billings, Montana

Rust College
Holly Springs, Mississippi

Scarritt College
Nashville, Tennessee

Shenandoah College
Winchester, Virginia

Simpson College
Indianola, Iowa

Southern Methodist University
Dallas, Texas

Southwestern College
Winfield, Kansas

Southwestern University
Georgetown, Texas

Spartanburg Methodist College
Spartanburg, South Carolina

Sue Bennett College
London, Kentucky

Syracuse University
Syracuse, New York

Tennessee Wesleyan College
Athens, Tennessee

Texas Wesleyan College
Fort Worth, Texas

Union College
Barbourville, Kentucky

University of Denver
Denver, Colorado

University of Evansville
Evansville, Indiana

University of Puget Sound
Tacoma, Washington

University of the Pacific
Stockton, California

Virginia Wesleyan College
Norfolk, Virginia

Wesleyan College
Macon, Georgia

Wesley College
Dover, Delaware

West Virginia Wesleyan College
Buckhannon, West Virginia

Westmar College
LeMars, Iowa

Westminster College
Salt Lake City, Utah

Wiley College
Marshall, Texas

Willamette University
Salem, Oregon

Wofford College
Spartanburg, South Carolina

Wood Junior College
Mathiston, Mississippi

Young Harris College
Young Harris, Georgia

UNITED METHODIST SEMINARIES AND SCHOOLS OF THEOLOGY

Boston University School of Theology
Boston, Massachusetts

Candler School of Theology
Atlanta, Georgia

Drew University, The Theological School
Madison, New Jersey

Duke University, The Divinity School
Durham, North Carolina

Gammon Theological Seminary
Atlanta, Georgia

Garrett-Evangelical Theological Seminary
Evanston, Illinois

Iliff School of Theology
Denver, Colorado

Methodist Theological School in Ohio
Delaware, Ohio

Perkins School of Theology
Southern Methodist University
Dallas, Texas

Saint Paul School of Theology
Kansas City, Missouri

School of Theology at Claremont
Claremont, California

United Theological Seminary
Dayton, Ohio

Wesley Theological Seminary
Washington, D.C.

UNITED METHODIST ELEMENTARY AND SECONDARY SCHOOLS

Boylan-Haven-Mather Academy
Camden, South Carolina

Holding Institute
Laredo, Texas

Kents Hill School
Kents Hill, Maine

Lydia Patterson Institute
El Paso, Texas

McCurdy School
Espanola, New Mexico

Navajo Methodist Mission School
Farmington, New Mexico

Pennington School
Pennington, New Jersey

Randolph-Macon Academy
Front Royal, Virginia

Red Bird Settlement School
Beverly, Kentucky

Robinson School
Santurce, Puerto Rico

Sager-Brown School
Baldwin, Louisiana

Tilton School
Tilton, New Hampshire

Vashti School
Thomasville, Georgia

Wyoming Seminary
Kingston, Pennsylvania